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असाधारण

EXTRAORDINARY

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PART II — Section 2

प्राधिकार से प्रकाशित

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NEW DELHI, THURSDAY, MARCH 24, 2011/CHAITRA 3, 1933 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on dated 24.3.2011:—

BILL NO. 25 OF 2011

A Bill to provide for the establishment of an Authority to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Pension Fund Regulatory and Development Authority Act, 2011.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Short title,
extent and
commence-
ment.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “Authority” means the Pension Fund Regulatory and Development Authority established under sub-section (1) of section 3;

(b) “central recordkeeping agency” means an agency registered under section 26 to perform the functions of recordkeeping, accounting, administration and customer service for subscribers to schemes;

(c) “Chairperson” means the Chairperson of the Authority;

(d) “document” shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, in printed or in electronic version, which is intended to be used, or which may be used, by the Interim Pension Fund Regulatory and Development Authority, or Authority or an intermediary or any other entity connected with the National Pension System, for the purpose of recording that matter;

(e) “individual pension account” means an account of a subscriber, executed by a contract setting out the terms and conditions under the National Pension System;

(f) “Interim Pension Fund Regulatory and Development Authority” means the Interim Pension Fund Regulatory and Development Authority set up by the Central Government through Resolutions No. F.No. 5/7/2003-ECB&PR dated the 10th October, 2003 and F.No. 1(6)/2007-PR dated the 14th November, 2008;

(g) “intermediary” includes pension fund, central recordkeeping agency, National Pension System Trust, pension fund adviser, retirement adviser, point of presence and such other person or entity connected with collection, management, recordkeeping and distribution of accumulations;

(h) “member” means a member of the Authority and includes its Chairperson;

(i) “National Pension System” means the contributory pension system referred to in section 20 whereby contributions from a subscriber are collected and accumulated in an individual pension account using a system of points of presence, a central recordkeeping agency and pension funds as may be specified by regulations;

(j) “National Pension System Trust” means the Board of Trustees who hold the assets of subscribers for their benefit;

(k) “notification” means a notification published in the Official Gazette;

(l) “pension fund” means an intermediary which has been granted a certificate of registration under sub-section (3) of section 26 by the Authority as a pension fund for receiving contributions, accumulating them and making payments to the subscriber in the manner as may be specified by regulations;

(m) “Pension Regulatory and Development Fund” means the fund constituted under sub-section (1) of section 39;

(n) “point of presence” means an intermediary registered with the Authority under sub-section (3) of section 26 as a point of presence and capable of electronic connectivity with the central recordkeeping agency for the purposes of receiving and transmitting funds and instructions and pay out of funds;

(o) “prescribed” means prescribed by rules made under this Act;

(p) “regulated assets” means the assets and properties, both tangible and intangible, owned, leased or developed by and other rights belonging to, the central recordkeeping agency;

(q) “regulations” means the regulations made by the Authority under this Act;

(r) “scheme” means a scheme of pension fund approved by the Authority under this Act;

(s) “Securities Appellate Tribunal” means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;

(t) "subscriber" includes a person who subscribes to a scheme of a pension fund;
 (u) "Subscriber Education and Protection Fund" means the fund constituted under sub-section (1) of section 40;

10 of 1949.

(v) "Trustee Bank" means a banking company as defined in the Banking Regulation Act, 1949.

4 of 1938.

(2) Words and expressions used and not defined in this Act, but defined in—

1 of 1956.

(i) the Insurance Act, 1938;

42 of 1956.

(ii) the Companies Act, 1956;

15 of 1992.

(iii) the Securities Contracts (Regulation) Act, 1956; and

(iv) the Securities and Exchange Board of India Act, 1992,

shall have the meanings respectively assigned to them under those Acts.

CHAPTER II

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, an Authority to be called the Pension Fund Regulatory and Development Authority.

Establishment and incorporation of Authority.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

2 of 1985.

(3) The head office of the Authority shall be in the National Capital Region referred to in clause (f) of section 2 of the National Capital Region Planning Board Act, 1985.

(4) The Authority may establish offices at other places in India.

4. The Authority shall consist of the following Members, namely:—

Composition of Authority.

(a) a Chairperson;

(b) three whole-time members; and

(c) three part-time members,

to be appointed by the Central Government from amongst persons of ability, integrity and standing and having knowledge and experience in economics, finance, law or administrative matters with at least one person from each discipline.

5. (1) The Chairperson and every whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:

Term of office and conditions of service of Chairperson and members of Authority.

Provided that no person shall hold office as a Chairperson after he has attained the age of sixty-five years:

Provided further that no person shall hold office as a whole-time member after he has attained the age of sixty-two years.

(2) A part-time member shall hold office as such for a term not exceeding five years from the date on which he enters upon his office.

(3) The salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members shall be such as may be prescribed.

(4) The part-time members shall receive such allowances as may be prescribed.

(5) The salary, allowances and other conditions of service of a member shall not be varied to his disadvantage after his appointment.

(6) Notwithstanding anything contained in sub-section (1) or sub-section (2), a member may—

(a) relinquish his office, by giving in writing to the Central Government, a notice of not less than thirty days; or

(b) be removed from his office in accordance with the provisions of section 6.

6. (1) The Central Government may remove from office the Chairperson or any other member who—

Removal of members from office.

(a) is, or at any time has been, adjudged as insolvent; or

(b) has become physically or mentally incapable of acting as a member; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has, in the opinion of the Central Government, so abused his position as to render his continuance in office detrimental to the public interest.

(2) No such Chairperson or other member shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

Restriction on future employment of members.

7. (1) The Chairperson and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept—

(a) any employment either under the Central Government or under any State Government; or

(b) any appointment in any regulated entity in the pension sector.

(2) The Chairperson and the whole-time members of the Interim Pension Fund Regulatory and Development Authority holding the office as such before the commencement of this Act, shall not, on and after such commencement, accept any appointment in any regulated entity in the pension sector for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government.

Administrative powers of Chairperson.

8. The Chairperson shall have the powers of general superintendence and direction in respect of all administrative matters of the Authority.

Meetings of Authority.

9. (1) The Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part in any deliberation or decision of the Authority with respect to that matter.

Vacancies, etc., not to invalidate proceedings of Authority.

10. No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority;

or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Officers and employees of Authority.

11. (1) The Authority may appoint such officers and other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and other conditions of service of officers and other employees of the Authority appointed under sub-section (1) shall be such as may be determined by regulations.

CHAPTER III

EXTENT AND APPLICATION

Extent and
application.

12. (1) This Act shall apply to—

(a) the National Pension System;

(b) any other pension scheme not regulated by any other enactment.

(2) Every pension scheme referred to in clause (b) shall conform to the regulations made by the Authority within such time as may be specified in the regulations.

(3) Notwithstanding anything contained in sub-section (1), the provisions of this Act shall not apply to—

(a) the schemes or funds under—

46 of 1948.

(i) the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948;

19 of 1952.

(ii) the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;

4 of 1966.

(iii) the Seamen's Provident Fund Act, 1966;

Assam Act X
of 1955.

(iv) the Assam Tea Plantations Provident Fund and Pension Fund Scheme Act, 1955; and

Jammu and
Kashmir Act
XV of 1961.

(v) the Jammu and Kashmir Employees' Provident Funds Act, 1961;

4 of 1938.

(b) contracts referred to in sub-section (11) of section 2 of the Insurance Act, 1938;

(c) any other pension scheme, which the Central Government may, by notification, exempt from the application of this Act;

61 of 1951.

(d) persons appointed before the 1st day of January, 2004 to public services in connection with the affairs of the Union, or to All-India Services constituted under section 2A of the All-India Services Act, 1951;

(e) persons appointed to public services in connection with the affairs of any State, or such Union territories as may be specified by notification by the Central Government.

(4) Notwithstanding anything contained in sub-section (3), any State Government or administrator of a Union territory may, by notification, extend the National Pension System to its employees.

(5) Notwithstanding anything contained in clause (c) of sub-section (3), the Central Government may, by notification, extend the application of this Act to any other pension scheme [including any other pension scheme exempted and notified under clause (c) of sub-section (3)].

(6) Any person governed under any of the schemes or funds referred to in sub-section (3) may, at his option, also join the National Pension System.

CHAPTER IV

TRANSFER OF ASSETS, LIABILITIES, ETC., OF INTERIM PENSION FUND REGULATORY AND
DEVELOPMENT AUTHORITY

13. On and from the date of establishment of the Pension Fund Regulatory and Development Authority,—

(a) all the assets and liabilities of the Interim Pension Fund Regulatory and Development Authority shall stand transferred to, and vested in, the Authority.

Explanation.—The assets of the Interim Pension Fund Regulatory and Development Authority shall be deemed to include all rights and powers, all properties,Transfer of
assets, liabilities,
etc., of Interim
Pension Fund
Regulatory and
Development
Authority.

whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of the Interim Pension Fund Regulatory and Development Authority and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Interim Pension Fund Regulatory and Development Authority immediately before that day, for or in connection with the purpose of the said Regulatory Authority, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;

(c) all sums of money due to the Interim Pension Fund Regulatory and Development Authority immediately before that day shall be deemed to be due to the Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Interim Pension Fund Regulatory and Development Authority immediately before that day may be continued or may be instituted by or against the Authority.

CHAPTER V

DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

Duties,
powers and
functions of
Authority.

14. (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty, to regulate, promote and ensure orderly growth of the National Pension System and pension schemes to which this Act applies and to protect the interests of subscribers of such System and schemes.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include—

(a) regulating the National Pension System and the pension schemes to which this Act applies;

(b) approving the schemes, the terms and conditions thereof and laying down norms for the management of the corpus of the pension funds, including investment guidelines under such schemes;

(c) registering and regulating intermediaries;

(d) issuing to an intermediary, on application, a certificate of registration and renewing, modifying, withdrawing, suspending or cancelling such registration;

(e) protecting the interests of subscribers by—

(i) ensuring safety of the contribution of subscribers to various schemes of pension funds to which this Act applies;

(ii) ensuring that the intermediation and other operational costs under the National Pension System are economical and reasonable;

(f) establishing mechanism for redressal of grievances of subscribers to be determined by regulations;

(g) promoting professional organisations connected with the pension system;

(h) adjudication of disputes between intermediaries and between intermediaries and subscribers;

(i) collecting data and requiring the intermediaries to collect such data and undertaking and commissioning studies, research and projects;

(j) undertaking steps for educating subscribers and the general public on issues relating to pension, retirement savings and related issues and training of intermediaries;

(k) standardising dissemination of information about performance of pension funds and performance benchmarks;

(l) regulating the regulated assets;

(m) levying fees or other charges for carrying out the purposes of this Act;

(n) specifying by regulations the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by intermediaries;

(o) calling for information from, undertaking inspection of, conducting inquiries and investigations including audit of, intermediaries and other entities or organisations connected with pension funds;

(p) exercising such other powers and functions as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under clause (o) of sub-section (2), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any book, register and other document of any person or intermediary referred to in section 26, at any place;

(iv) issuing commissions for the examination of witnesses or documents;

(v) any other matter which may be prescribed.

(4) Without prejudice to the provisions contained in sub-sections (1), (2) and (3) and section 16, the Authority may, by order, for reasons to be recorded in writing, in the interest of subscribers, take any of the following measures, pending investigation or inquiry, namely:—

(i) restrain persons from participating in any scheme;

(ii) restrain any office bearer of an intermediary from acting as such;

(iii) impound and retain the proceeds under the scheme in respect of any activity which is under investigation;

(iv) attach, after passing an order, on an application made for approval, by the Judicial Magistrate of first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the scheme in any manner involved in violation of any of the provisions of this Act or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, relating to the proceeds actually involved in the violation of any of the provisions of this Act or the rules or the regulations made thereunder shall be allowed to be attached;

(v) direct any intermediary or any person associated with the scheme in any manner not to dispose of or alienate an asset forming part of any activity which is under investigation:

Provided that the Authority shall, either before or after, passing such orders, under this section, give to such intermediaries or persons concerned an opportunity of being heard.

Power to issue directions.

15. Save as otherwise provided in section 14, if after making, or causing to be made, an inquiry, the Authority is satisfied that it is necessary—

(i) in the interests of subscribers or orderly development of National Pension System or a pension scheme to which this Act applies; or

(ii) to prevent the affairs of any intermediary or other persons or entities referred to in section 26 being conducted in a manner detrimental to the interests of subscribers; or

(iii) to secure the proper management of any such intermediary or person or entity, it may issue such directions to such intermediaries or entities or to any person or class of persons referred to in section 26, or associated with the pension fund, as it may deem fit:

Provided that the Authority shall, either before or after passing such orders, give an opportunity of being heard to such intermediaries, entities or persons concerned.

Power of investigation.

16. (1) Where the Authority has a reasonable ground to believe that—

(a) the activities of the pension fund are being conducted in a manner detrimental to the interest of the subscriber; or

(b) any intermediary or any person associated with the schemes of the pension fund has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Authority thereunder,

it may, at any time, by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the pension fund and to report thereon to the Authority.

(2) Without prejudice to the provisions contained in sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company, in case of a company and every intermediary or persons or entity referred to in section 26 or every person associated with the pension fund to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

1 of 1956.

(3) The Investigating Authority may require any intermediary or any person or entity associated with the pension fund in any manner to furnish such information to, or produce such books, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or register, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated or entity with the pension fund by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any book, register, other documents and record if they are required again:

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents or record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents or, as the case may be, record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath any intermediary or any person associated with the pension fund in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(7) If any person fails without reasonable cause or refuses—

(a) to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document or record which it is his duty under sub-section (2) or sub-section (3) to furnish; or

(b) to furnish any information which it is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (6),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to twenty-five crore rupees, or with both, and also with a further fine which may extend to ten lakh rupees for every day after the first day during which the failure or refusal continues.

17. (1) Where the Authority, in consequence of information in its possession, has reason to believe that— Search and seizure.

(a) any person who has been required under sub-section (3) of section 16 to produce, or cause to be produced, any books, accounts or other documents in his custody or power has omitted or failed to produce, or cause to be produced, such books, accounts or other documents; or

(b) any person to whom a requisition to produce any books, accounts or other documents as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which will be useful for, or relevant to, an investigation under sub-section (1) of section 16; or

(c) a contravention of any provision of this Act has been committed or is likely to be committed by an intermediary; or

(d) any claim which is due to be settled by the intermediary, has been or is likely to be rejected or settled at a figure higher than a reasonable amount; or

(e) any claim which is due to be settled by an intermediary, has been or is likely to be rejected or settled at a figure lower than a reasonable amount; or

(f) any illegal fees and charges have been transacted or are likely to be transacted by an intermediary; or

(g) any books, accounts, papers, receipts, vouchers, survey reports or other documents, belonging to an intermediary are likely to be tampered with, falsified or manufactured,

it may authorise any officer of the Authority, not below the rank equivalent to that of a Gazetted Officer of the Government (hereafter referred to as the authorised officer), to—

(i) enter and search any building or place where he has reason to suspect that such books, accounts or other documents, or any books or papers relating to any claim, rebate or commission or any receipts, vouchers, reports or other documents are kept;

(ii) break open the lock of any box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iii) seize all or any such books, accounts or other documents, found as a result of such search;

(iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies therefrom.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such police officer or officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (1), serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act.

(5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Authority for such retention is obtained:

Provided that the Authority shall not authorise the retention of the books, accounts, papers, receipts, vouchers, reports, or other documents for a period exceeding thirty days after all the proceedings under this Act, for which the books, accounts, papers, receipts, vouchers, reports, or other documents are relevant, are completed.

(6) The person from whose custody the books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf at such place and time as the authorised officer may appoint in this behalf.

(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports or other documents seized under sub-section (1) objects for any reason to the approval given by the Authority under sub-section (5), he may make an application to the Central Government stating therein the reason for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, report or other documents.

(8) On receipt of the application under sub-section (7), the Central Government may, after giving the applicant an opportunity of being heard, pass such order as it thinks fit.

(9) The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1). 2 of 1974.

(10) The Central Government may, by notification, make rules in relation to any search or seizure under this section and in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer,—

(i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;

(ii) for ensuring safe custody of any books, accounts, papers, receipts, vouchers, reports, or other documents seized under this section.

18. If the Authority finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rule or regulation made thereunder, the Authority may pass an order requiring such person to cease and desist from committing or causing such violation.

Power of
Authority to
ensure
compliance.

19. (1) If at any time the Authority has reason to believe that the central recordkeeping agency or pension fund is acting in a manner likely to be prejudicial to the interest of subscribers, it may, after giving the central recordkeeping agency or pension fund, as the case may be, an opportunity of being heard, make a report thereon to the Central Government.

Management
by Administra-
tor.

(2) If the Central Government, after considering the report made under sub-section (1) is of the opinion, that it is necessary or proper to do so, it may appoint an Administrator to manage the affairs of the central recordkeeping agency or pension fund, as the case may be, under the direction and control of the Authority, in such manner as may be specified by notification.

CHAPTER VI

NATIONAL PENSION SYSTEM

20. (1) The contributory pension system notified by the Government of India in the Ministry of Finance *vide* notification number F. No. 5/7/2003-ECB&PR dated the 22nd December, 2003, shall be deemed to be the National Pension System with effect from the 1st day of January, 2004, and such National Pension System may be amended from time to time by regulations.

National
Pension
System.

(2) Notwithstanding anything contained in the said notification, the National Pension System shall, on the commencement of this Act, have the following basic features, namely:—

(a) every subscriber shall have an individual pension account under the National Pension System;

(b) no withdrawals shall be permitted from the individual pension account, except as may be specified under the regulations;

(c) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;

(d) there shall be a choice of multiple pension funds and multiple schemes:

Provided that one of the schemes shall offer the subscriber an option of investing hundred per cent. of his funds in Government securities;

(e) there shall be portability of individual pension accounts in case of change of employment;

(f) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;

(g) there shall not be any implicit or explicit assurance of benefits except market-based guarantee mechanism to be purchased by the subscriber;

(h) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and

(i) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

(3) In addition to the individual pension account mentioned in clause (a) of sub-section (2), a subscriber may also, at his option, have an additional account under the

National Pension System having the features mentioned in clauses (c) to (g) of sub-section (2) and also having the additional feature that the subscriber shall be free to withdraw part or all of his money at any time from the additional account.

Central
Record-
keeping
Agency.

21. (1) The Authority shall, by granting a certificate of registration under sub-section (3) of section 26, appoint a central recordkeeping agency:

Provided that the Authority may, in public interest, appoint more than one central recordkeeping agency.

(2) The central recordkeeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central recordkeeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central recordkeeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central recordkeeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Point of
presence.

22. (1) The Authority may, by granting a certificate of registration under sub-section (3) of section 26, permit one or more persons to act as a point of presence for the purpose of receiving contributions and instructions, transmitting them to the Trustee Bank or the central recordkeeping agency, as the case may be, and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard.

(2) A point of presence shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

Pension funds.

23. (1) The Authority may, by granting a certificate of registration under sub-section (3) of section 26, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds:

Provided that at least one of the pensions fund shall be a Government company and wholly owned by a Government company or Government companies.

Explanation.—For the purposes of this sub-section, the expression “Government company” shall have the meaning assigned to it in section 617 of the Companies Act, 1956. 1 of 1956.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

Prohibition of
investment of
funds of
subscribers
outside India.

24. No pension fund shall, directly or indirectly invest outside India, the funds of subscribers.

25. The central recordkeeping agency, points of presence and pension funds, shall satisfy the eligibility norms as may be specified by the regulations, including minimum capital requirement, past track-record including the ability to provide guaranteed returns, costs and fees, geographical reach, customer base, information technology capability, human resources and such other matters.

Eligibility norms of the central record-keeping agency, etc.

CHAPTER VII

REGISTRATION OF INTERMEDIARIES

26. (1) No intermediary, including a pension fund or a point of presence to the extent regulated under this Act, shall commence any activity relating to a pension fund except under and in accordance with the conditions of a certificate of registration granted by the Authority in accordance with the provisions of this Act and the regulations:

Registration of central record-keeping agency, pension fund, point of presence, etc.

Provided that any intermediary, including any point of presence, who had been associated with a pension scheme and appointed to act as such by the Interim Pension Fund Regulatory and Development Authority immediately before the establishment of the Authority under this Act for which no registration certificate was necessary prior to such establishment, and may continue to do so for a period of six months from such establishment or, if he has made an application for such registration within the said period of six months till the disposal of such application.

(2) Every application for grant of a certificate of registration under this Act shall be in such form and manner and shall be accompanied by such fees as may be determined by regulations.

(3) The Authority may, after considering the application and subject to such terms and conditions as it may specify, grant a certificate of registration as a central recordkeeping agency, point of presence, pension fund or such other intermediary, as the case may be.

(4) The Authority may, by order, suspend or cancel a certificate of registration granted under sub-section (3) in such manner as may be determined by regulations:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

CHAPTER VIII

PENALTIES AND ADJUDICATION

27. (1) Any person, who is required under this Act or any rules or regulations made thereunder,—

Penalty for failure by an intermediary or any other person to comply with provisions of this Act, rules, regulations and directions.

(a) to obtain a certificate of registration from the Authority for carrying on any activity under this Act, carries on such activities without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or one crore rupees, whichever is less;

(b) to comply with the terms and conditions of a certificate of registration fails to do so, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or one crore rupees, whichever is less;

(c) to furnish any information, document, books, returns or report to the Authority, fails to furnish the same within the time specified by the Authority, he shall be liable to a penalty which may extend to one crore rupees or five times the amount of profits made or losses avoided, whichever is higher;

(d) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher.

(2) If any person, who is required under this Act or any rules or regulations made thereunder, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher.

(3) If any intermediary registered with the Authority, after having been called upon by the Authority, in writing, to redress the grievances of subscribers, fails to redress such grievances within the time stipulated by the Authority, he shall be liable to a penalty of not more than one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

(4) If any person, who is registered under this Act as an intermediary, fails to segregate moneys of the client or clients or uses the moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

(5) Whoever fails to comply with any provision of this Act, the rules or the regulations made or the directions issued by the Authority under the provisions of this Act for which no separate penalty has been provided, he shall be liable to a penalty which may extend to one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

Crediting sums realised by way of penalties to Subscriber Education and Protection Fund.

28. All sums realised by way of penalties under this Act shall be credited to the Subscriber Education and Protection Fund established under sub-section (1) of section 40.

Power to adjudicate.

29. (1) For the purposes of adjudging under section 27, the Authority shall appoint any of its officers not below the rank specified by regulations to be an adjudicating officer for holding an inquiry as may be determined by regulations, after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of section 27, he may recommend such penalty as he thinks fit in accordance with the provisions of that section, to the member in charge of investigation and surveillance.

(3) The penalty shall be imposed by a member other than the member in charge of investigation and surveillance:

Provided that while adjudging the quantum of penalty under section 27, the member shall have due regard to the following factors, namely:—

- (a) amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) amount of loss caused to a subscriber or group of subscribers; and
- (c) the repetitive nature of the default.

Attachment of assets and supersession of management of intermediary.

30. (1) Any person aggrieved may apply to the Authority for an interim measure of protection in respect of any of the following matters, namely:—

- (a) the retention, preservation, interim custody or sale of any asset or property which is regulated by the provisions of this Act;
- (b) securing any pension fund, monies and other assets and properties owned by or under the control of the pension fund;

(c) interim injunction or appointment of an administrator; and

(d) such other interim measures as may appear to the Authority to be just and necessary,

and the Authority shall have power to make such orders including an order for attachment of assets of the pension fund as it deems fit in this regard.

(2) Where, on a complaint received by the Authority or *suo motu*, the Authority, after conducting an inquiry, comes to a conclusion that the governing board or board of directors, by whatever name called, or the persons in control of any intermediary to the extent regulated under this Act are indulging in any activity which is in contravention of the provisions of this Act or regulations, it may supersede the governing board or board of directors or management of the intermediary in accordance with the provisions of the regulations.

(3) In case the governing board or board of directors or management of an intermediary is superseded under sub-section (2), the Authority may appoint an Administrator to manage the affairs of the intermediary in accordance with the provisions contained in the regulations.

31. (1) Without prejudice to any award of penalty by the member under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both. Offences.

(2) If any person fails to pay the penalty imposed by the member or fails to comply with any of the directions or orders issued by the member, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

32. (1) The Central Government may, on the recommendation by the Authority, if satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder and also from the imposition of any penalty under this Act with respect to the alleged violation: Power to grant immunity.

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that the recommendation of the Authority under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

33. Notwithstanding anything contained in—

(i) the Wealth-tax Act, 1957;

(ii) the Income-tax Act, 1961; or

(iii) any other enactment for the time being in force relating to tax on wealth, income, profits or gains,

Exemption from tax on wealth, income, profits and gains.

the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of its wealth, income, profits or gains derived.

Cognizance of offences by court.

34. (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act.

Appeal to Securities Appellate Tribunal.

35. (1) Any person aggrieved by an order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Securities Appellate Tribunal which shall have jurisdiction over the matter.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date of receipt of the order appealed against and it shall be in such form and manner and shall be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period, if it is satisfied that there was sufficient cause for not preferring the appeal within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Authority, the parties to the appeal and to the adjudicating officers concerned.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date on which the appeal is presented to it.

(6) Without prejudice to the provisions of sections 15T and 15U of the Securities and Exchange Board of India Act, 1992, the Securities Appellate Tribunal shall deal with an appeal under this section in accordance with such procedure as may be prescribed. 15 of 1992.

Civil Court not to have jurisdiction.

36. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to Supreme Court.

37. Any person aggrieved by any decision or order of the Securities Appellate Tribunal under this Act may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

CHAPTER IX

FINANCE, ACCOUNT AND AUDIT

Grants by Central Government.

38. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

Constitution of Pension Regulatory and Development Fund.

39. (1) There shall be constituted a fund to be called the Pension Regulatory and Development Fund and there shall be credited thereto—

(a) all Government grants, fees and charges received by the Authority;

(b) all sums received by the Authority from such other source as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the Chairperson and other members and officers and other employees of the Authority;

(b) other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

40. (1) The Authority shall establish a fund to be called the Subscriber Education and Protection Fund.

Constitution of Subscriber Education and Protection Fund.

(2) There shall be credited to the Subscriber Education and Protection Fund the following amounts, namely:—

(a) grants and donations given to the Subscriber Education and Protection Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Subscriber Education and Protection Fund;

(b) the interest or other income received out of the investments made from the Subscriber Education and Protection Fund;

(c) the sums realised by way of penalties by the Authority under section 28.

(3) The Subscriber Education and Protection Fund shall be administered and utilised by the Authority for protection of the interests of subscribers in accordance with regulations made for the purpose.

41. (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit-report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

CHAPTER X

MISCELLANEOUS

42. (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give, in writing to it, from time to time:

Power of Central Government to issue directions.

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

Power of
Central
Government
to supersede
Authority

43. (1) If at any time the Central Government is of the opinion that—

(a) on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) the Authority has persistently defaulted in complying with any direction issued by the Central Government that the Central Government is entitled to issue under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has deteriorated; or

(c) circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Central Government; and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority.

(4) The Central Government shall, as soon as may be, cause a copy of the notification issued under sub-section (1) and a full report of any action taken by it, to be laid before each House of Parliament.

Establishment
of Pension
Advisory
Committee.

44. (1) The Authority may, by notification, establish with effect from such date as it may specify in the notification, a Committee to be known as the Pension Advisory Committee.

(2) The Pension Advisory Committee shall consist of not more than twenty-five members, excluding *ex officio* members, to represent the interests of employees' associations, subscribers, commerce and industry, intermediaries, and organisations engaged in pension research.

(3) The Chairperson and the members of the Authority shall be the *ex officio* Chairperson and *ex officio* members of the Pension Advisory Committee.

(4) The objects of the Pension Advisory Committee shall be to advise the Authority on matters referred to it by the Authority.

Furnishing of
returns, etc.,
to Central
Government.

45. (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the pension industry as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of schemes of pension funds regulated under this Act during the previous financial year.

(3) Copies of the reports received under sub-section (2) shall be laid, as soon as may be, after they are received, before each House of Parliament.

46. The Chairperson and other members and officers and other employees of the Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

Members, officers and employees of Authority to be public servants.

45 of 1860.

47. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Protection of action taken in good faith.

48. (1) The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 51) as it may deem necessary.

Delegation of powers.

(2) The Authority may, by a general or special order in writing, also form committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

49. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

50. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and the other conditions of service of the Chairperson and whole-time members under sub-section (3) of section 5;

(b) the allowances payable to part-time members under sub-section (4) of section 5;

(c) the additional functions which may be performed by the Authority under clause (p) of sub-section (2) of section 14;

(d) any other matter in respect of which the Authority may exercise the powers of a civil court under clause (v) of sub-section (3) of section 14;

(e) the procedure to be followed by the authorised officer under sub-section (10) of section 17;

(f) the form and manner in which an appeal may be filed before the Securities Appellate Tribunal and the fee which shall accompany such appeal, under sub-section (2) of section 35;

(g) the procedure to be followed by the Securities Appellate Tribunal in dealing with an appeal, under sub-section (6) of section 35;

(h) the form in which annual statement of accounts shall be maintained by the Authority under sub-section (1) of section 41;

(i) the time within which and the form and manner in which returns and reports are to be made by the Authority to the Central Government under sub-section (1) of section 45;

(j) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

Power to
make
regulations.

51. (1) The Authority may, by notification, make regulations consistent with this Act and the rules made thereunder for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the time and places of meetings of the Authority and the procedure to be followed at such meetings (including the quorum at such meetings) under sub-section (1) of section 9;

(b) the terms and other conditions of service of the officers and other employees of the Authority under sub-section (2) of section 11;

(c) the regulations to be made by the Authority in respect of pension schemes referred to in clause (b) of sub-section (1) of section 12 and the time within which such schemes should conform to the regulations, made under sub-section (2) of that section;

(d) the establishing of mechanisms for redressing grievances of subscribers under clause (f) of sub-section (2) of section 14;

(e) the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by intermediaries under clause (n) of sub-section (2) of section 14;

(f) amendment to the National Pension System referred to in sub-section (1) of section 20;

(g) the duties and functions of central recordkeeping agency under sub-section (2) of section 21;

(h) the determination of compensation of fair value of the regulated assets payable to central recordkeeping agency under proviso to sub-section (3) of section 21;

(i) the manner of receiving contributions and instructions and transmitting them to the Trustee Bank or central recordkeeping agency, as the case may be, and paying out the benefits to the subscribers, under sub-section (1), and the regulations governing functioning of points of presence under sub-section (2) of section 22;

(j) the manner in which a pension fund may receive contributions, accumulate them and make payments to the subscriber under sub-section (1), the number of

pension funds under sub-section (2), the functioning of the pension fund under sub-section (3), and the manner of managing the schemes by the pension fund under sub-section (4) of section 23;

(k) the form and manner in which an application for grant of certificate of registration shall be made and the fee which shall accompany such application under sub-section (2) of section 26;

(l) the conditions subject to which a certificate of registration may be granted to an intermediary under sub-section (3) of section 26;

(m) the procedure and manner of suspension or cancellation of certificate of registration of intermediaries under sub-section (4) of section 26;

(n) the procedure for holding inquiry by an adjudicating officer under sub-section (1) of section 29;

(o) the supersession of the governing board or Board of directors of the intermediary under sub-section (2) of section 30;

(p) the management of affairs of the intermediary by an Administrator under sub-section (3) of section 30;

(q) the manner of administering and utilising the Subscriber Education and Protection Fund under sub-section (3) of section 40;

(r) the delegation of powers and functions of the Authority to committees under sub-section (2) of section 48;

(s) establishment, duties and functioning of the National Pension System Trust;

(t) any other matter which is required to be or may be specified by regulations or in respect of which provision is to be or may be made by regulations.

52. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Rules and regulations to be laid before Parliament.

53. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear it to be necessary for removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

54. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Application of other laws not barred.

55. Anything done or any action taken by the Interim Pension Fund Regulatory and Development Authority and Central Government under the Resolutions of the Government of India in the Ministry of Finance number F. No. 5/7/2003-ECB&PR, dated the 10th October, 2003 and F.No.1(6)2007-PR, dated the 14th November, 2008 and notification number F. No. 5/7/2003-ECB & PR, dated the 22nd December, 2003, shall be deemed to have been done or taken under the corresponding provisions of this Act.

Savings.

STATEMENT OF OBJECTS AND REASONS

The Central Government operationalised the New Pension System (hereafter referred to as NPS) from the 1st January, 2004 through a notification dated the 22nd December, 2003. The NPS is mandatory for new recruits to the Central Government services (except the armed forces).

2. The Government had constituted an interim pension sector regulator named as "The Interim Pension Fund Regulatory and Development Authority" through a Government Resolution in October, 2003 as a precursor to a statutory regulator. The Pension Fund Regulatory and Development Authority Bill, 2005 (hereafter referred to as PFRDA Bill, 2005) was introduced in Lok Sabha in March, 2005 to establish a statutory Pension Fund Regulatory and Development Authority. The PFRDA Bill, 2005 was referred to the Standing Committee on Finance on the 24th March, 2005 for examination and report thereon. The Standing Committee on Finance gave its recommendations on the 26th July, 2005. The Government proposed official amendments in January, 2009 to give effect to certain recommendations of the Standing Committee on Finance, but the official amendments could not be moved and the PFRDA Bill, 2005 could not be considered and passed and the same lapsed due to dissolution of the 14th Lok Sabha.

3. An early legislative mandate was considered necessary as the NPS was already in place without the statutory regulatory mechanism. However, pending the passage of the PFRDA Bill, 2005, the Interim Pension Fund Regulatory and Development Authority has created the institutional arrangement of NPS Trust, central recordkeeping agency, pension fund and a trustee bank. Twenty Seven State Governments and Union territories have adopted the NPS for their employees and are in the process of extending the NPS to their employees. Sixteen State Governments have already joined the NPS institutional architecture. The NPS has been launched for all citizens of the country including unorganised sector workers, on voluntary basis, with effect from the 1st May, 2009. It has now become necessary to replace the interim arrangements with proper infrastructure under a regulatory framework in order to avoid future complications.

4. In view of the urgency of the matter, the Pension Fund Regulatory and Development Authority Bill, 2011 is being introduced in Parliament to provide for the establishment of a statutory Pension Fund Regulatory and Development Authority (PFRDA) to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers of various pension fund schemes and for matters connected therewith or incidental thereto.

5. The Pension Fund Regulatory and Development Authority Bill, 2011, *inter alia*, provides for—

(a) establishing a statutory regulatory body to be called the Pension Fund Regulatory and Development Authority which will undertake promotional, developmental and regulatory functions in respect of pension funds;

(b) empowering the PFRDA to regulate the National Pension System, as amended from time to time;

(c) empowering the PFRDA to perform promotional, developmental and regulatory functions relating to pension funds (including authorising and regulating intermediaries) through regulations or guidelines, prescribing the disclosure standards, protecting the interests of subscribers to schemes of pension funds;

(d) authorising the PFRDA to levy fees for services rendered, etc., to meet its expenses;

(e) empowering the PFRDA to impose penalties for any violation of the provisions of the legislation, rules, regulations, etc.

6. The Pension Fund Regulatory and Development Authority Bill, 2011 is broadly on the lines of the PFRDA Bill, 2005 as modified by the official amendments proposed to the Bill by the Government in January, 2009. The salient features of the proposed modifications in the Pension Fund Regulatory and Development Authority Bill, 2011 are as under:—

(a) the foreign investment policy for pension sector intermediaries, (including the pension funds and central recordkeeping agency) would be determined and notified outside the proposed legislation under the Foreign Exchange Management Act, 1999. This is on lines with the recent legislations in the financial sector where foreign investment is determined under the Foreign Exchange Management Act, 1999. In the PFRDA Bill, 2005, as modified by the official amendments, the foreign investment policy for pension funds and central recordkeeping agency was part of the said Bill;

(b) to make a provision for establishment of PFRDA consisting of a Chairperson, three Whole-time Members and three Part-time Members instead of a Chairperson, three Whole-time Members and two Part-time Members as proposed in the PFRDA Bill, 2005, as modified by the official amendments;

(c) to make a provision that the period of transitional arrangement for continuance of the intermediary's business would be six months till his application for registration certificate is decided by the PFRDA instead of three months as provided in PFRDA Bill, 2005;

(d) to make certain new provisions providing that, —

(i) actions done by the Interim Pension Fund Regulatory and Development Authority would also be saved;

(ii) the New Pension System as provided in the PFRDA Bill, 2005 would be renamed as the National Pension System in the Pension Fund Regulatory and Development Authority Bill, 2011;

(iii) the National Pension System Trust would be recognised as an intermediary in the Pension Fund Regulatory and Development Authority Bill, 2011;

(iv) the main features of the National Pension System would be part of the statute and the Government notification of 22nd December, 2003 introducing the NPS could be modified through the regulations under the proposed legislation;

(v) no withdrawals shall be permitted from the individual Tier-I Pension Account, except as may be specified under the regulations; and

(vi) the provisions of clause 7 of the Pension Fund Regulatory and Development Authority Bill, 2011 relating to restriction on future employment of Members of the Pension Fund Regulatory and Development Authority would also be applied to the Chairperson and Members of the Interim Pension Fund Regulatory and Development Authority.

7. The Notes on Clauses explain in detail the various provisions contained in the Pension Fund Regulatory and Development Authority Bill, 2011.

8. The Bill seeks to achieve the above objects.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 AND 274 OF THE
CONSTITUTION OF INDIA

[Copy of latter No. 5(52)/04-ECB&PR (Vol. V) dated 21 March, 2011 from
Shri Pranab Mukherjee, Minister of Finance to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Pension Fund Regulatory and Development Authority Bill, 2011 has recommended, under clause (1) of article 117 and clause (1) of article 274 of the Constitution the introduction and under clause (3) of article 117 the consideration of the Bill by Lok Sabha.

Notes on clauses

Clause 1.— This clause relates to the short title, extent and commencement of the proposed legislation. This clause enables the Central Government to appoint a date with respect to the commencement of the proposed legislation. However, different dates may be appointed for different provisions of the proposed legislation and any reference in any such provision to the commencement of proposed legislation shall be construed as a reference to the coming into force of that provision.

Clause 2.— This clause contains the definitions of various expressions used in the Bill. The definitions of "Authority", "central recordkeeping agency", "Document", "intermediary", "National Pension System", "National Pension System Trust", "pension fund" "point of presence" and "Trustee Bank" are some of them. An intermediary includes pension fund, central recordkeeping agency, National Pension System Trust, pension fund adviser, retirement adviser, point of presence and such other person or entity connected with collection, management, recordkeeping and distribution of accumulations.

Clause 3.— This clause relates to the establishment and incorporation of Authority.

This clause provides that the Central Government may by notification establish an authority to be called the Pension Fund Regulatory and Development Authority. Sub-clause (3) provides that the head office of the Authority shall be in the National Capital Region. Sub-clause (4) empowers the Authority to establish offices at other places in India.

Clause 4.— This clause relates to the composition of the Authority.

This clause provides that the Authority shall consist of a Chairperson, three whole-time members and three part-time members to be appointed by the Central Government from amongst persons of ability, integrity and standing and having experience and knowledge in economics, finance, law or administrative matters with at least one member from each discipline.

Clause 5.— This clause relates to term of office and conditions of service of the Chairperson and other members of the Authority.

Sub-clause (1) of this clause provides that the Chairperson and every other whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment. However, no person shall hold office as a Chairperson after he has attained the age of sixty-five years and further no person shall hold office as a whole-time member after he has attained the age of sixty-two years.

Sub-clause (2) of this clause provides that a part-time member shall hold office as such for a term not exceeding five years from the date on which he enters upon his office.

Sub-clause (3) of this clause provides that the salary and allowances payable to, and other terms and conditions of service of the members other than a part-time member shall be such as may be prescribed.

Sub-clause (4) of this clause provides that part-time members shall receive such allowances as may be prescribed.

Sub-clause (5) of this clause provides that salary, allowances and other conditions of service of a member shall not be varied to his disadvantage after his appointment.

Sub-clause (6) of this clause provides that a member may relinquish his office by giving in writing to the Central Government, a notice of not less than thirty days or he could be removed from his office in accordance with the provisions of clause 6.

Clause 6.—This clause relates to removal of members from office.

Sub-clause (1) of this clause empowers the Central Government to remove the Chairperson or any other member on grounds of insolvency, physical or mental incapacity, conviction of an offence involving moral turpitude, acquisition of financial or other interest prejudicial to his functions as a member or abuse of position.

Sub-clause (2) of this clause provides that where the grounds for removal of the Chairperson or other member are acquisition of financial or other prejudicial interest or abuse of position, he shall not be removed unless he has been given a reasonable opportunity of being heard in the matter.

Clause 7.—This clause relates to restriction on the future employment of members.

This clause provides that the Chairperson and whole-time members of the authority shall not accept any employment under the Central Government or any State Government or in any regulated entity in the pension sector, for a period of two years from the date on which they cease to hold office, except with the prior approval of the Central Government.

Clause 8.—This clause relates to administrative powers of Chairperson.

This clause provides that the Chairperson shall have the powers of general superintendence and directions in respect of all administrative matters of the Authority.

Clause 9.—This clause relates to meetings of Authority.

Sub-clause (1) of this clause empowers the Authority to frame regulations regarding rules of procedure for transaction of business at its meetings (including the quorum at such meetings) and the time and places of such meetings.

Sub-clause (2) of this clause provides that the Chairperson will preside at the meetings of the Authority and in his absence, the members present may choose any other member from amongst themselves to preside at the meeting.

Sub-clause (3) of this clause provides that the decisions at the meetings of the Authority will be taken by a majority of votes and the Chairperson or the member presiding at the meeting will have a second or casting vote.

Sub-clause (4) of this clause provides that any member who is a director of a company will disclose any direct or indirect pecuniary interest in any matters to be discussed at a meeting of the Authority and will not take part in any related deliberations or decisions. Further, such disclosure is to be recorded in the proceedings of the meeting.

Clause 10.—This clause relates to vacancies etc. not to invalidate proceedings of Authority.

This clause provides that mere existence of any vacancy or defect in the constitution of the Authority or any irregularity in procedure which does not affect the merits of the case, will not invalidate any act or proceeding of the Authority.

Clause 11.—This clause relates to officers and employees of Authority.

Sub-clause (1) of this clause provides that the Authority may appoint such officers and other employees as may be necessary for its efficient functioning under the proposed legislation.

Sub-clause (2) of this clause provides that the Authority is also empowered to make regulations providing for laying down the detailed terms and other conditions of service of its officers and employees.

Clause 12.—This clause relates to extent and application of the proposed legislation.

Sub-clause (1) of this clause provides that the proposed legislation will apply to the National Pension System notified by the Government of India in the Ministry of Finance *vide* notification number 5/7/2003-ECB & PR dated 22nd December, 2003 and any other pension scheme not regulated by any other enactment.

Sub-clause (2) of this clause provides that the Authority shall make regulations for these pension schemes and specify the time limit within which these schemes have to conform to such regulations.

Sub-clause (3) of this clause specifically excludes from the provisions of the proposed legislation, the schemes or funds under the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Seamen's Provident Fund Act, 1966, the Assam Tea Plantations Provident Fund and Pension Fund Scheme Act, 1955, the Jammu and Kashmir Employees' Provident Funds Act, 1961, contracts referred to in sub-section (11) of section 2 of the Insurance Act, 1938, and any other pension scheme, which the Central Government may, by notification, exempt from the application of the proposed legislation. Further the said sub-clause excludes from the purview of the proposed legislation, Central Government employees appointed before 1st January, 2004, persons appointed to All-India Services and to persons in public services appointed in connection with the affairs of any State, or such Union territories as may be specified by the Central Government by notification.

Sub-clause (4) of this clause provides that any State Government or Union territory may, by notification, extend the National Pension System to its employees.

Sub-clause (5) of this clause enables the Central Government to extend the application of this Act to any other pension scheme including any other pension scheme exempted and notified under clause (c) of sub-clause (3).

Sub-clause (6) of this clause enables any person specifically excluded under sub-clause (3), at his option, also join the New Pension System.

Clause 13. — This clause relates to Transfer of assets, liabilities, etc., of Interim Pension Fund Regulatory and Development Authority.

This clause permits transfer of assets and liabilities, etc., of the Interim Pension Fund Regulatory and Development Authority to the statutory Pension Fund Regulatory and Development Authority.

Clause 14.— This clause relates to the duties, powers and functions of the Authority.

Sub-clause (1) of this clause provides that the Authority shall have the duty to regulate, promote and ensure the orderly growth of the National Pension System and pension schemes to which this Act applies and, to protect the interests of subscribers of such system and schemes.

Sub-clause (2) of this clause specifies the powers and functions of the Authority. These, *inter alia*, include regulation of the National Pension System and the pension schemes to which the proposed legislation shall apply; approving schemes and their terms and conditions; laying down of norms for the management of the corpus of the pension funds including investment guidelines; registration and regulation of intermediaries; protection of the interests of subscribers to pension funds, establishment of a grievance redressal mechanism, adjudication of disputes between intermediaries and between intermediaries and subscribers, undertaking steps for education of subscribers; standardisation of information dissemination regarding performance of pension funds and performance benchmarks, levying fees or other charges, calling for information from and undertaking inspection, inquiry and investigation of intermediaries.

Sub-clause (3) of this clause empowers the Authority to exercise certain powers which are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of (i) the discovery and production of books of account and other documents, at places and times specified by the Authority; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) inspection of any books, registers and other documents of intermediaries, at any place; (iv) issuing commissions for the examination of witnesses or documents; and (v) any other matter which may be prescribed by the Central Government by rules.

Sub-clause (4) of this clause provides that pending enquiry or investigation, the Authority may, by an order, for reasons to be recorded in writing, in the interests of subscribers; (i) restrain persons from participating in any scheme; (ii) restrain any office bearer of an intermediary from acting as such; (iii) impound and retain the proceeds under the scheme in respect of any activity which is under investigation; (iv) attach bank accounts of any intermediary or any person associated with the scheme who is in any manner involved in violation of any of the provisions of the proposed legislation or the rules or regulations made thereunder. This can be done for a period not exceeding one month, with the approval of a Judicial Magistrate of the first class having jurisdiction. However, only the bank account or any transaction entered therein, relating to the proceeds actually involved in the violation of any of the provisions of the proposed legislation or the rules or regulations made thereunder can be attached. Further, the Authority can direct any intermediary or any person associated with the scheme in any manner not to dispose of or alienate an asset forming part of any activity which is under investigation. However, the Authority has to give such intermediaries or persons concerned an opportunity of being heard.

Clause 15.—This clause relates to power to issue directions.

This clause empowers the Authority to issue directions to intermediaries or persons or entities associated with pension funds if it is satisfied, after an inquiry, that it is necessary to do so in the interests of subscribers or orderly development of National Pension System or a pension scheme to which the proposed legislation applies or to prevent the conduct of affairs of any such intermediary or other persons or entities acting in a manner detrimental to the interests of subscribers, or to secure the proper management of any such intermediary or person or entity. However, before or after passing such orders, the Authority has to give an opportunity of hearing to such intermediaries, entities or persons concerned.

Clause 16.—This clause relates to powers of investigation.

Sub-clause (1) of this clause empowers the Authority to direct a person (Investigating Authority) to investigate and report on the affairs of intermediaries or persons associated with a pension fund if the Authority has a reasonable ground to believe that the activities of the pension fund are being conducted in a manner detrimental to the interests of subscribers or that any intermediary or any person associated with the schemes of the pension fund has violated any of the provisions of the proposed legislation or the rules, regulations made thereunder or directions issued by the Authority.

Sub-clause (2) of this clause seeks to provide that without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, in case of companies, every employee and every intermediary or every person associated with the pension fund has to preserve and produce all the books, registers and other documents of, or relating to the company, the intermediary or such person, which are in their custody or power, to the Investigating Authority or authorised person.

Sub-clause (3) of this clause empowers the Investigating Authority to require any intermediary or person associated with the pension fund to furnish any material which is relevant or necessary for the purposes of its investigation.

Sub-clause (4) of this clause provides that the Investigating Authority can keep such material in its custody for six months and thereafter it has to return the same. However, the Investigating Authority can call for the material if needed again. Further, if the person on

whose behalf the material is produced requires certified copies of the same, then the Investigating Authority has to give certified copies.

Sub-clause (5) of this clause empowers the Investigating Authority to examine on oath, any intermediary or any person associated with the pension fund in any manner, in relation to the affairs of his business.

Sub-clause (6) of this clause requires that notes of any examination have to be taken down in writing, read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

Sub-clause (7) of this clause provides that if any person fails without reasonable cause to produce any relevant material or information to the Investigating Authority or authorised person or to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him by the Investigating Authority while under examination; or to sign the notes of any examination, then he will be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to twenty five crore rupees, or with both, and also with a further fine which may extend to ten lakh rupees for every day after the first day during which the failure or refusal continues.

Clause 17.—This clause relates to powers of search and seizure of the Authority.

Sub-clause (1) of this clause provides that if the Authority has information causing it to believe that any person, who is required to do so, does not or will not provide books, documents or other material relevant for an investigation; or that the provisions of this Act have been or may be contravened; or that any claim to be settled by the intermediary is likely to be rejected or settled at a figure higher or lower than a reasonable amount; or that any illegal fees and charges have been transacted or are likely to be transacted by an intermediary; or that relevant material are likely to be tampered with, falsified or manufactured, then the Authority can authorise any officer of the Authority, who is equivalent in rank to that of a Gazetted Officer of the Government, to enter and search any building or place where he suspects such books, documents and other material may be kept, seize all such material, place marks of identification on them, take extracts from them or make copies.

Sub-clause (2) of this clause provides that the authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him in the exercising the powers of search and seizure.

Sub-clause (3) of this clause provides that if it is not practicable to seize any relevant book, document and other material, the authorised officer can serve an order on the person in immediate possession or control of the relevant book, document or other material, as the case may be, that he shall not remove, part with or otherwise deal with them except with the previous permission of such officer.

Sub-clause (4) of this clause empowers the authorised officer to examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the proposed legislation.

Sub-clause (5) of this clause provides that the books, accounts, papers and other documents seized shall not be retained by the authorised officer for more than one hundred and eighty days from the date of the seizure unless he records the reasons in writing and obtains the approval of the Authority. However, the Authority cannot authorise the retention of the same for more than thirty days after all the related proceedings under the proposed legislation are completed.

Sub-clause (6) of this clause provides that the person from whose custody the books, accounts and other documents are seized may make copies of the same and take extracts from them, in the presence of the authorised officer or any other person empowered by him.

Sub-clause (7) of this clause provides that if a person legally entitled to the books, and other documents seized objects for any reason to the approval given by the Authority for retention of the same, he may make an application to the Central Government for their return.

Sub-clause (8) of this clause provides that on receipt of the above application the Central Government may, after giving the applicant an opportunity of being heard, pass such order as it thinks fit.

Sub-clause (9) of this clause provides that the provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall apply to the extent possible, to every search and seizure.

Sub-clause (10) of this clause empowers the Central Government to make rules in relation to search or seizure.

Clause 18.—This clause relates to power of authority to ensure compliance.

This clause empowers the Authority to ensure compliance with the provisions of the proposed legislation. If the Authority finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of the proposed legislation, or the rules or regulations made thereunder, the Authority may pass an order requiring such person to cease and desist from committing or causing such violation.

Clause 19.—This clause relates to management by Administrator.

Sub-clause (1) of this clause provides that if at any time the Authority has reason to believe that the central recordkeeping agency or pension fund is acting in a manner likely to be prejudicial to the interests of subscribers, it may, after giving an opportunity to it of being heard, make a report to the Central Government.

Sub-clause (2) of this clause provides that if the Central Government, after considering the above report considers that it is necessary or proper to do so, it may appoint an Administrator to manage the affairs of the central recordkeeping agency or pension fund, as the case may be, under the direction and control of the Authority, in a manner specified by notification.

Clause 20.—This clause relates to National Pension System.

This clause describes the National Pension System as notified by the Government of India in the Ministry of Finance *vide* notification number F. No. 5/7/2003-ECB & PR dated the 22nd December, 2003, as amended from time to time as may be specified under the regulations. It also specifies the basic features of the New Pension System. These are—(a) every subscriber shall have an individual pension account; (b) no withdrawals would be permitted from the individual pension account, except as may be specified under the regulations; (c) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency; (d) there shall be a choice of multiple pension funds and schemes: Provided that one of the schemes shall offer the subscriber an option of investing hundred per cent. of his funds in government securities; (e) individual pension accounts will be portable in case of change of employment; (f) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency; (g) there shall not be any implicit or explicit assurance of benefits except market based guarantee mechanism to be purchased by the subscriber; (h) a subscriber shall not exit from the National Pension System except as specified by the regulations; and (i) at exit, the subscriber shall purchase an annuity from a life insurance company as specified under the National Pension System. In addition to the individual pension account, the subscribers would also have an additional account which would have all the characteristics of the individual pension account, but would be freely withdrawable.

Clause 21.—This clause relates to provisions regarding the Central Recordkeeping Agency.

Sub-clause (1) of this clause empowers the Authority to appoint a central recordkeeping agency by granting a certificate of registration. The Authority may, in public interest, appoint more than one central recordkeeping agency.

Sub-clause (2) of this clause provides that the central recordkeeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

Sub-clause (3) of this clause provides that all the assets and properties of the central recordkeeping agency are regulated assets. When the certificate of registration of the central recordkeeping agency expires or is revoked then the Authority can appropriate and take over the regulated assets. However, the central recordkeeping agency will be entitled to be compensated the fair value of the regulated assets, as determined by regulations, unless the revocation is on account of any violation of the conditions of the certificate of registration or the provisions of the proposed legislation or the regulations.

Clause 22.—This clause relates to provisions regarding points of presence.

Sub-clause (1) of this clause empowers the Authority to permit points of presence, by granting them registration certificates, to receive contributions and instructions, transmit them to the Trustee Bank or the central recordkeeping agency, as the case may be, and pay out benefits to subscribers in accordance with the regulations made by the Authority.

Sub-clause (2) of this clause provides that a point of presence shall function in accordance with the terms of its registration certificate and regulations made under the proposed legislation.

Clause 23.—This clause relates to provisions regarding pension funds.

Sub-clause (1) of this clause provides that the Authority may, by granting registration certificates, permit persons to act as pension funds for the purpose of receiving contributions, accumulating them and making payments to the subscriber as specified by regulations.

Sub-clause (2) of this clause provides that the number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds. However, at least one pension fund shall be a Government company.

Sub-clause (3) of this clause provides that a pension fund shall function in accordance with the terms of its registration certificate and regulations made under the proposed legislation.

Sub-clause (4) of this clause provides that the pension fund shall manage schemes in accordance with the regulations.

Clause 24.— This clause stipulates a prohibition on investment of funds of subscribers outside India.

Clause 25.— This clause stipulates that the authority would make regulations on eligibility norms for the central recordkeeping agency, points of presence and pension funds, including minimum capital requirement, past track record including the ability to provide guaranteed returns, cost and fees, geographical reach, customer base, information technology capability and human resources.

Clause 26.—This clause relates to the registration of intermediaries including central recordkeeping agency, pension funds and points of presence.

Sub-clause (1) of this clause provides that no intermediary, to the extent regulated under the proposed legislation, can commence any activity relating to a pension fund except as provided in the registration certificate. However, any intermediary who was appointed by the Interim Authority immediately before the establishment of the statutory authority could continue to work as such for a period of six months from such establishment if he has made an application within the said period of six months till the disposal of such application.

Sub-clause (2) of this clause provides that every application for grant of a registration certificate under the proposed legislation shall be in the form and manner and accompanied by such fees as determined by the Authority by regulations made by it.

Sub-clause (3) of this clause provides that the Authority may grant the registration certificate, after considering the application and subject to such terms and conditions as it may specify.

Sub-clause (4) of this clause provides that the Authority may, by order, suspend or cancel a certificate of registration in a manner determined by regulations. However, it can only do so after giving a reasonable opportunity of being heard to the person concerned.

Clause 27.—This clause relates to provisions regarding penalties for failure by an intermediary or any other person to comply with provisions of this proposed legislation, rules, regulations and other directions.

Sub-clause (1) of this clause lays down certain penalties. If any person, who is required under the proposed legislation or rules or regulations made thereunder to obtain a certificate of registration from the Authority for carrying on any activity under the proposed legislation, carries on such activities without doing so, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or one crore rupees, whichever is less. Further, if any person who is required to comply with the terms and conditions of certificate of registration fails to do so, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or one crore rupees, whichever is less. If any person who is required to furnish any information, document, books, returns or report to the Authority, fails to furnish the same within the time specified by the Authority, he shall be liable to a penalty which may extend to one crore rupees or five times the amount of profits made or losses avoided, whichever is higher. If any person who is required to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher.

Sub-clause (2) of this clause provides that if any person, who is required under the proposed legislation or the rules or regulations made thereunder, to enter into an agreement with his client, fails to do so, he shall be liable to a penalty of one lakh rupees for each day during which the failure continues or five times the amount of profits made or losses avoided, whichever is higher.

Sub-clause (3) of this clause provides that if any intermediary registered with the Authority, after having been called upon by the Authority, in writing, to redress the grievances of subscribers, fails to do so within the time stipulated by the Authority, he shall be liable to a penalty of not more than one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

Sub-clause (4) of this clause provides that if any person, who is registered under this Act as an intermediary, fails to segregate moneys of the client or clients or uses the moneys for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

Sub-clause (5) of this clause provides that whoever fails to comply with any provision of this Act, rules, regulations or directions issued by the Authority for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees or five times the amount of profits made or losses avoided, whichever is higher.

Clause 28.—This clause provides that all sums realised by way of penalties under the proposed legislation shall be credited to the Subscriber Education and Protection Fund.

Clause 29.—This clause empowers the Authority to adjudicate on matters relating to penalties.

Sub-clause (1) of this clause provides that for the purposes of adjudging on penalties, the Authority shall appoint any of its officers not below the rank specified by regulations to be an adjudicating officer for holding an inquiry as determined by regulations, after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

Sub-clause (2) of this clause provides the adjudicating officer with the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any relevant document. If, on such inquiry, he is satisfied that the person has failed to comply with the matters referred to in this section on penalties, he may recommend a penalty to the member in charge of investigation and surveillance.

Sub-clause (3) of this clause provides that the penalty shall be imposed by a member other than the member in charge of investigation and surveillance. Further, while adjudging the quantum of penalty the member has to take into account the amount of disproportionate gain or unfair advantage made as a result of the default or the amount of loss caused to subscribers and the repetitive nature of the default.

Clause 30.—This clause relates to attachment of assets and supersession of management of intermediaries.

Sub-clause (1) of this clause provides that on receiving an application from aggrieved persons for an interim measure of protection, the Authority can pass an order for the detention, preservation, interim custody or sale of any asset or property which is regulated by the provisions of the proposed legislation, securing any pension funds, monies and other assets and properties of the pension fund, interim injunction or appointment of an administrator, the attachment of assets of the pension fund and such other interim measures as the Authority may consider it to be just and necessary.

Sub-clause (2) of this clause provides that if on a complaint received by the Authority or *suo motu*, the Authority, after conducting an enquiry comes to a conclusion that the governing board or Board of directors or the persons in control of any intermediary, to the extent regulated under the proposed legislation, are indulging in any activity which is in contravention of the provisions of the proposed legislation or the regulations made thereunder, it may supersede the governing board or Board of directors or management of the intermediary in accordance with the provisions of the regulations.

Sub-clause (3) of this clause provides that in case the governing board or Board of directors or management of an intermediary is superseded under sub-clause (2), the Authority may appoint an Administrator to manage the affairs of the intermediary in accordance with the provisions contained in the regulations.

Clause 31.—This clause relates to offences.

Sub-clause (1) of this clause provides that if any person contravenes or attempts to contravene or abets the contravention of the provisions of the proposed legislation or the rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

Sub-clause (2) of this clause provides that if any person fails to pay the penalty imposed by the member or fails to comply with any of the directions or orders issued by the member, he shall be punishable with imprisonment for a term of at least one month, which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

Clause 32.—This clause empowers the Central Government to grant immunity

Sub-clause (1) of this clause provides that the Central Government, on the recommendation of the Authority, may grant immunity from prosecution and from the imposition of penalties, to any person alleged to have violated any of the provisions of the

proposed legislation or the rules or regulations made thereunder, if he makes a full and true disclosure regarding the violation. However, the recommendation of the Authority is not binding on Central Government, and moreover, if the prosecution proceedings were instituted before the application for immunity was received, then the Central Government cannot grant immunity.

Sub-clause (2) of this clause empowers the Central Government to withdraw the immunity if it is satisfied that the person concerned had, during the proceedings, not complied with the condition on which the immunity was granted or had given false evidence.

Clause 33.—This clause seeks to exempt the Authority from tax on wealth, income, profits and gains.

Clause 34.—This clause relates to cognizance of offences by court.

Sub-clause (1) of this clause provides that no court can take cognizance of any offence punishable under the proposed legislation or the rules or regulations made thereunder, except on a complaint made by the Authority.

Sub-clause (2) of this clause provides that no court inferior to that of a Court of Session can try any offence punishable under the proposed legislation.

Clause 35.—This clause relates to appeal to the Securities Appellate Tribunal.

Sub-clause (1) of this clause provides that any person aggrieved by an order made by the Authority or by an adjudicating officer may appeal before the Securities Appellate Tribunal.

Sub-clause (2) of this clause provides that such appeals have to be filed within forty-five days from the date of receipt of the order appealed against and also empowers the Central Government to make rules regarding the form, manner and fees for such appeals. However, the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period, if it is satisfied that there was sufficient cause for not filing it within that period.

Sub-clause (3) of this clause provides that on receipt of an appeal, the Securities Appellate Tribunal may pass orders after giving the parties to the appeal an opportunity being heard.

Sub-clause (4) of this clause provides that the Securities Appellate Tribunal has to send a copy of every order made by it to the Authority, the parties to the appeal and to the adjudicating officers concerned.

Sub-clause (5) of this clause provides that the Securities Appellate Tribunal has to deal with an appeal filed before it as expeditiously as possible and endeavour to dispose of it finally within six months from the date on which it received the appeal.

Sub-clause (6) of this clause empowers the Central Government to make rules regarding the procedure to be followed by the Securities Appellate Tribunal for dealing with an appeal.

Clause 36.—This clause lays down that no civil court can entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under the proposed legislation or a Securities Appellate Tribunal is empowered by or under the proposed legislation to determine. Further, no court or other authority shall be competent to grant an injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the proposed legislation.

Clause 37.—This clause provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal under the proposed legislation may file an appeal to the Supreme Court on any question of law arising out of such order. This has to be done within sixty days from the date of communication of the decision or order. However, the Supreme Court may allow an appeal to be filed within a further period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within sixty days.

Clause 38.—This clause provides that the Central Government may sanction grants to the Authority after due appropriation made by Parliament, to be utilised for the purposes of the proposed legislation.

Clause 39.—This clause relates to provisions regarding the Pension Regulatory and Development Fund.

Sub-clause (1) of this clause provides for the constitution of the Fund into which all Government grants, fees and charges received by the Authority and all sums received by the Authority from other sources decided by the Central Government, will be credited.

Sub-clause (2) of this clause provides that the Fund is to be used for meeting the salaries, allowances and other remuneration of the Chairperson and other members and officers and other employees of the Authority and other expenses of the Authority in connection with the discharge of its functions and for the purposes of the proposed legislation.

Clause 40.—This clause relates to provisions regarding the Subscriber Education and Protection Fund.

Sub-clause (1) of this clause provides for the establishment of the Subscriber Education and Protection Fund.

Sub-clause (2) of this clause provides that all grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund, the interest or other income received out of the investments made from the Fund and penalties received by the Authority will be credited to the Fund.

Sub-clause (3) of this clause provides that the Fund shall be administered and utilised by the Authority for protection of the interests of subscribers in accordance with regulations made for the purpose.

Clause 41.—This clause relates to provisions regarding accounts and audit of the Authority.

Sub-clause (1) of this clause provides that the Authority has to maintain proper accounts and other relevant records and prepare an annual statement of accounts according to rules made by the Central Government in consultation with the Comptroller and Auditor-General of India.

Sub-clause (2) of this clause provides that the accounts of the Authority shall be audited by the Comptroller and Auditor-General of India.

Sub-clause (3) of this clause provides that the Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and can demand the production of books, accounts and other documents and inspect any of the offices of the Authority.

Sub-clause (4) of this clause provides that the audited accounts and the audit report of the Authority have to be forwarded annually to the Central Government which then has to lay them before each House of Parliament.

Clause 42.—This clause empowers Central Government to issue directions on matters of policy.

Sub-clause (1) of this clause provides that directions on matters of policy issued, in writing, by Central Government will be binding on the Authority. As far as practicable, Central Government should give the Authority an opportunity to express its views before giving any such direction.

Sub-clause (2) of this clause provides that the decision of the Central Government, whether a question is one of policy or not, shall be final.

Clause 43.—This clause relates to provisions regarding supersession of the Authority by Central Government.

Sub-clause (1) of this clause empowers Central Government to supersede the Authority for a maximum period of six months by issuing a notification, specifying the reasons. However, before issuing any such notification, the Central Government has to give a reasonable opportunity to the Authority to make representations against the proposed supersession and consider any representations of the Authority. This step can be taken by Central Government if it is of the opinion that the Authority is unable to discharge its functions or perform its duties on account of circumstances beyond its control or if the Authority has persistently defaulted in complying with any direction issued by the Central Government or in the discharge of its functions or performance of its duties and as a result of such default, the financial position of the Authority or the administration of the Authority has deteriorated; or circumstances exist which render it necessary in the public interest.

Sub-clause (2) of this clause provides that when the notification superseding the Authority is published, the Chairperson and other members have to vacate their offices as from the date of supersession. Further, all the powers, functions and duties of the Authority shall be exercised and discharged by the Central Government and all properties owned or controlled by the Authority shall vest in the Central Government, until the Authority is reconstituted.

Sub-clause (3) of this clause provides that the Central Government shall reconstitute the Authority on or before the expiration of the period of supersession specified in the notification.

Sub-clause (4) of this clause provides that the Central Government shall, as soon as possible place a copy of the notification regarding supersession of the Authority and a full report of any action taken by it, before each House of Parliament.

Clause 44.— This clause relates to establishment of Pension Advisory Committee.

Sub-clause (1) of this clause provides that the Authority may, by notification, establish a Committee known as the Pension Advisory Committee.

Sub-clause (2) of this clause provides that the Pension Advisory Committee shall consist of not more than twenty-five members, excluding *ex officio* members, to represent the interests of employees' associations, subscribers, commerce and industry, intermediaries, and organisations engaged in pension research.

Sub-clause (3) of this clause provides that the Chairperson and the members of the Authority shall be the *ex officio* Chairperson and *ex officio* members of the Pension Advisory Committee.

Sub-clause (4) of this clause provides that the objects of the Pension Advisory Committee shall be to advise the Authority on matters referred to it by the Authority.

Clause 45.—This clause relates to provisions regarding furnishing of returns, etc., to Central Government.

Sub-clause (1) of this clause provides that the Authority shall furnish to the Central Government returns, statements and other particulars in regard to any proposed or existing programme for the promotion and development of the pension industry as required by Central Government. The Central Government shall by rules, lay down the form and manner of making such returns, statements, etc.

Sub-clause (2) of this clause provides that the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report on its activities during the previous financial year, including the activities for promotion and development of schemes of pension funds regulated under the proposed legislation.

Sub-clause (3) of this clause provides that copies of the reports shall be laid, as soon as possible, after they are received, before each House of Parliament.

Clause 46.—This clause provides that the Chairperson, other members, officers and other employees of the Authority shall be deemed to be public servants, when carrying out any of the provisions of the proposed legislation.

Clause 47.—This clause provides that no prosecution or other legal proceedings can be instituted against the Central Government or the Authority or any of their officers, etc., for anything done in good faith under the proposed legislation or the rules or regulations made thereunder.

Clause 48.—This clause relates to delegation of powers by the Authority.

Sub-clause (1) of this clause provides that the Authority may delegate its powers (other than the power to make regulations) and functions by general or special order in writing, to any member, officer of the Authority or any other person subject to conditions, if any, specified in the order.

Sub-clause (2) of this clause provides that the Authority may, by a general or special order in writing, also form committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

Clause 49.—This clause relates to provisions regarding offences by companies.

Sub-clause (1) of this clause provides that if an offence under the proposed legislation has been committed by a company, then every person in charge of or responsible for the conduct of business of the company at the time the offence was committed shall be deemed to be guilty of the offence and can be proceeded against and punished accordingly. However, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, then he shall not be liable to any punishment.

Sub-clause (2) of this clause provides that if any offence under the proposed legislation has been committed by a company and it is proved that the offence has been committed with the consent or connivance of any officer of the company, then he shall also be deemed to be guilty of the offence and can be proceeded against and punished accordingly.

Clause 50.—This clause relates to power of the Central Government to make rules.

Sub-clause (1) of this clause empowers the Central Government by notification in the Official Gazette to make rules for carrying out the provisions of the proposed legislation.

Sub-clause (2) of this clause enumerates the various matters in respect of which Central Government may make rules. These, *inter alia*, include, the salary, allowances and the other conditions of service of the Chairperson, whole-time members and part-time members; functions which may be performed by the Authority in addition to those already mentioned in this Act; the procedure to be followed by the authorised officer for searches and seizures; the form, manner and the fee for appeals before the Securities Appellate Tribunal; the procedure to be followed by the Securities Appellate Tribunal in dealing with an appeal and; the form in which the Authority shall maintain an annual statement of accounts and provide returns and reports to the Central Government.

Clause 51.—This clause relates to powers of the Authority to make regulations.

Sub-clause (1) of this clause empowers the Authority to make, by notification in the Official Gazette, regulations for carrying out the provisions of the proposed legislation. Such regulations should be consistent with the provisions of the proposed legislation and the rules made thereunder.

Sub-clause (2) of this clause enumerates the various matters in respect of which the Authority can make regulations. These *inter alia*, include, the time, places and procedure for meetings (including the quorum at such meetings) of the Authority, the terms and other

conditions of service of the officers and other employees of the Authority, regulations for pension schemes not regulated by any other enactment; mechanisms for redressing grievances of subscribers, the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by intermediaries; the duties and functions of central recordkeeping agency, the determination of compensation of fair value of the regulated assets payable to central recordkeeping agency, regulations governing the functioning of pension funds and points of presence, the manner of managing schemes by pension funds, the form and manner of application for grant of registration certificate, conditions for grant of the certificate and the accompanying fee, the procedure and manner of suspension and cancellation of certificate of registration of intermediaries, the procedure for holding inquiry by an adjudicating officer, the supersession of the governing board of the intermediary, the management of affairs of the intermediary by an Administrator, the manner of administering and utilising the Subscriber Education and Protection Fund and delegation of powers and functions of the Authority to committees.

Clause 52.—This clause provides that every rule made by the Central Government and every regulation made by the Authority under the proposed legislation shall be laid before each House of Parliament.

Clause 53.—This clause relates to power to remove difficulties.

Sub-clause (1) of this clause provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make provisions, by order, published in the Official Gazette, for removing the difficulty. These orders must be consistent with the provisions of the proposed legislation. However, no order shall be made under this clause after the expiry of five years from the commencement of the proposed legislation.

Sub-clause (2) of this clause provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of Parliament.

Clause 54.—This clause provides that the provisions of the proposed legislation shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Clause 55.—This clause is a savings clause providing that anything done or any action taken by the Interim Pension Fund Regulatory and Development Authority and Central Government under the Resolutions of the Government of India in the Ministry of Finance number F.No. 5/7/2003-ECB&PR dated the 10th October, 2003 and F.No.1(6)2007-PR dated the 14th November, 2008 and notification number F. No. 5/7/2003-ECB & PR dated the 22nd December, 2003, shall be deemed to have been done or taken under the corresponding provisions of the proposed legislation.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that the Central Government may, from such date as may be appointed by it, establish for the purposes of the proposed legislation an Authority to be called the Pension Fund Regulatory and Development Authority. In terms of clause 5 of the Bill, the Central Government will prescribe the salary, allowances and other terms and conditions of service of the Chairperson and other members of the Authority. Clause 11 of the Bill provides that the Authority will appoint officers and other employees as it considers necessary for the efficient discharge of its functions under the proposed legislation and frame regulations regarding their terms and other conditions of service.

2. Clause 38 of the Bill provides that the Central Government may make grants to the Authority to be utilised for the purposes of the proposed legislation, after due appropriation made by Parliament by law.

3. Clause 39 of the Bill provides for the constitution of a fund to be called the Pension Regulatory and Development Fund into which all Government grants, fees and charges received by the Authority and all sums received by the Authority from other sources decided by the Central Government shall be credited. The Fund is to be used for meeting the salaries, allowances and other remuneration of the Chairperson, other members and officers and other employees of the Authority and other expenses of the Authority in connection with the discharge of its functions and for the purposes of the proposed legislation.

4. Clause 40 of the Bill provides for the establishment of a Subscriber Education and Protection Fund into which all grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund, the interest or other income received out of the investments made from the Fund and the amount by way of penalties received by the Authority will be credited. The Fund is to be administered and utilised by the Authority for the protection of the interests of subscribers in accordance with the regulations made by the Authority for the purpose.

5. It is estimated that there would be an expenditure of approximately Rs. 48 crores of rupees in the year 2011-12, including grants given to the Authority, to be borne by the Central Government, for the purposes mentioned in paragraphs 2, 3 and 4 above. This would include non-recurring capital expenditure of 30 crores of rupees and a further recurring expenditure of about 18 crores of rupees on salaries, rent for office accommodation, etc., of the Authority. Eventually, it is expected that major recurring expenses of the Authority would be funded out of the fees and charges as may be received by the Authority.

6. The Bill, if enacted and brought into operation, would not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 50 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the matters in respect of which such rules may be made. These matters, *inter alia*, include (a) the matters relating to the salary, allowances and other terms and conditions of service of the Chairperson and other members of the Pension Fund Regulatory and Development Authority; (b) the powers and functions of the Authority in addition to those already specified in the Bill; (c) the procedure and other matters related to the exercise of powers of search and seizure by the Authority; (d) the form, manner and fee for filing an appeal before the Securities Appellate Tribunal and the procedure to be followed by the Securities Appellate Tribunal in dealing with appeals; (e) the form in which the Authority shall maintain annual statement of accounts; and (e) the time within which and the form and manner in which returns and reports are to be made by the Authority to the Central Government.

2. Clause 51 of the Bill empowers the Pension Fund Regulatory and Development Authority to make, by notification in the Official Gazette, regulations for carrying out the provisions of the proposed legislation. Such regulations should be consistent with the provisions of the proposed legislation and the rules made thereunder. The matters in respect of which the Authority may make regulations, *inter alia*, include (a) the matters relating to the transaction of business of the Authority at its meetings (including the quorum at such meetings) and the time and places for such meetings; (b) the terms and conditions of service of the officers and employees of the Authority; (c) regulations for pension schemes not regulated by any other enactment; (d) establishing a grievance redressal mechanism for subscribers; (e) the form and manner of maintaining books and statement of accounts by intermediaries; (f) the duties and functions of the central recordkeeping agency and the determination of compensation of fair value of the regulated assets payable to the central recordkeeping agency; (g) the functioning of point of presence and the manner of receiving contributions and instructions and transmitting them to the central recordkeeping agency and paying out benefits to subscribers; (h) the number of pension funds and the manner in which a pension fund may receive contributions, accumulate them and make payments to the subscribers and the manner of managing schemes by the pension funds, registration of intermediaries; (i) the procedure for holding inquiry by adjudicating officers, matters relating to supersession of the governing board or Board of directors of intermediaries; (j) the manner of administering and utilising the Subscriber Education and Protection Fund; (k) delegation of powers and functions to committees of members of the Authority; and (l) establishment, duties and functioning of the National Pension System Trust.

3. The rules and regulations made under the proposed legislation shall be required to be laid before the Parliament.

4. The matters in respect of which rules or regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself.

5. The delegation of legislative power is, therefore, of a normal character.

BILL No. 24 OF 2011

A Bill to provide for and regulate assignment of receivables by making provision for registration therefor and rights and obligations of parties to contract for assignment of receivables and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

1. (1) This Act may be called the Regulation of Factor (Assignment of Receivables) Act, 2011.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Short title,
extent and
commence-
ment.

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,—

Definitions

(a) "assignment" means transfer by agreement, of undivided interest of any assignor in any receivable due from any debtor in favour of a factor and includes an assignment where either the assignor or the debtor, are situated or established outside India;

(b) "assignee" means a factor in whose favour the receivable is transferred;

(c) "assignor" means any person who is the owner of any receivable;

(d) "bank" means,—

(i) a banking company;

(ii) a corresponding new bank;

(iii) the State Bank of India;

(iv) a subsidiary bank;

(v) such other bank which the Central Government may by notification specify for the purposes of this Act on the recommendations of the Reserve Bank; or

(vi) a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002 and licensed to undertake business of banking by the Reserve Bank under the provisions of the Banking Regulation Act, 1949;

(e) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949;

(f) "business enterprise" means any enterprise or medium enterprise, micro enterprise or small enterprise as defined in clauses (e), (g), (h) and (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006, respectively engaged in any business activity;

(g) "corresponding new bank" shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949;

(h) "debtor" means any person liable to the assignor, whether under a contract or otherwise, to pay any receivable or discharge any obligation in respect of the receivable whether existing, accruing, future, conditional or contingent;

(i) "factor" means a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 which has been granted a certificate of registration under sub-section (1) of section 3 or any body corporate established under an Act of Parliament or any State Legislature or any Bank or any company registered under the Companies Act, 1956 engaged in the factoring business;

(j) "factoring business" means acquisition of receivables of assignor by accepting assignment of such receivables or financing, whether by way of making loans or advances or otherwise against the security interest over any receivables;

(k) "financial contract" means any spot, forward, future, option or swap transaction involving interest rates, commodities, currencies, shares, bonds, debentures or any other financial instrument, any repurchase of securities and lending transaction or any other similar transaction or combination of such transactions entered into in the financial markets;

39 of 2002.
10 of 1949.

10 of 1949.

27 of 2006.

10 of 1949.

2 of 1934.

1 of 1956.

(l) "netting agreement" means any agreement among the system participants for the purpose of determination by the system provider of the amount of money or securities due or payable or deliverable as a result of setting off or adjusting the payment obligations or delivery obligations among the system participants, including the claims and obligations arising out of the termination by the system provider, on the insolvency or dissolution or winding up of any system participant or such circumstances as the system provider, may specify in its rules or regulations or bye-laws (by whatever name called), of the transactions admitted for settlement at a future date so that only a net claim be demanded or a net obligation be owned;

(m) "notification" means a notification published in the Official Gazette;

(n) "prescribed" means prescribed by rules made under this Act;

(o) "property" means,—

(i) the immovable property;

(ii) the movable property;

(iii) any debt or any right to receive payment of money, whether secured or unsecured;

(iv) the receivables;

(v) the intangible assets, being know-how, patent, copyright, design, trade mark, licence, franchise or any other business or commercial right of similar nature;

(p) "receivables" mean all or part of or undivided interest in any right of any person under a contract including an international contract where either the assignor or the debtor or the assignee is situated or established in a State outside India; to payment of a monetary sum whether such right is existing, future, accruing, conditional or contingent arising from and includes, any arrangement requiring payment of toll or any other sum, by whatever name called, for the use of any infrastructure facility or services;

(q) "Reserve Bank", means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;

2 of 1934.

(r) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955;

23 of 1955.

(s) "subsidiary Bank" shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;

38 of 1959.

(t) words and expressions used and not defined in this Act but defined in the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949, the Companies Act, 1956, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Credit Information Companies (Regulation) Act, 2005, or the Micro, Small and Medium Enterprises Development Act, 2006, shall have the meanings respectively assigned to them in those Acts.

2 of 1934.
10 of 1949.
1 of 1956.
54 of 2002.
30 of 2005.
27 of 2006.

CHAPTER II

REGISTRATION OF FACTORS

Registration
of factors.

3. (1) No factor shall commence or carry on the factoring business unless it obtains a certificate of registration from the Reserve Bank to commence or carry on the factoring business under this Act.

(2) Every factor shall make an application for registration to the Reserve Bank in such form and manner as it may specify:

Provided that a company registered as a non-banking financial company and existing on the commencement of this Act and engaged in factoring business before such commencement shall make an application for registration as a factor to the Reserve Bank before the expiry of the period of six months from such commencement and, notwithstanding anything contained in sub-section (1), may continue to carry on the factoring business until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

2 of 1934.

(3) Every applicant for grant of a certificate of a registration as a factor shall comply, for the purpose of registration, with all the requirements to be fulfilled by an applicant for grant of certificate of registration as non-banking financial company under the Reserve Bank of India Act, 1934 and all the provisions of that Act, so far as they relate to the registration of non-banking financial companies, shall (except those provided for under this Act) *mutatis mutandis* apply.

(4) In the case of existing non-banking financial company the Reserve Bank may issue a fresh certificate of registration as a factor, if the principal business of the non-banking financial company is the factoring business.

2 of 1934.

(5) Save as otherwise provided in this Act, every factor including factors not subject to requirement of registration under section 5, shall be governed by the Reserve Bank of India Act, 1934, the rules and regulations made thereunder and the directions or guidelines issued by the Reserve Bank, from time to time.

2 of 1934.

4. All provisions of Chapter IIIB of the Reserve Bank of India Act, 1934 relating to non-banking financial companies which have been granted a certificate of registration under sub-section (5) of section 45-IA of the Reserve Bank of India Act, 1934 shall (except those specifically provided for under this Act) *mutatis mutandis* apply to a factor which has been granted a certificate of registration under section 3.

Provisions of non-banking financial companies apply to factor.

1 of 1956.

5. Nothing contained in section 3 shall apply to a bank or any corporation established under an Act of Parliament or State Legislature, or a Government Company as defined under section 617 of the Companies Act, 1956.

Requirement for registration as a factor not to apply to bank or Statutory corporation or Government company.

6. (1) The Reserve Bank may, at any time by general or special order, direct that every factor shall furnish to it, in such form, at such intervals and within such time, such statements, information or particulars relating to factoring business undertaken by the factor, as may be specified by the Reserve Bank from time to time.

Powers of Reserve Bank to give directions and to collect information from factors.

(2) The Reserve Bank may, if it considers necessary in the interest of business enterprises availing factoring services or in the interest of factors or interest of other stake holders give directions to the factors either generally or to any factor in particular or group of factors in respect of any matters relating to or connected with the factoring business undertaken by such factors.

(3) If any factor fails to comply with any direction given by the Reserve Bank under sub-section (2), the Reserve Bank may prohibit such factor from undertaking the factoring business:

Provided that before prohibiting any factor from undertaking the factoring business, the factor shall be given a reasonable opportunity of being heard.

CHAPTER III

ASSIGNMENT OF RECEIVABLES

Assignment
receivables.

7. (1) Any assignor may, by an agreement in writing, assign any receivable due and payable to him by any debtor, to any factor, being the assignee, for a consideration as may be agreed between the assignor and the assignee:

Provided that if the debtor liable to pay the receivable or the business factor is situated or established outside India, any assignment of receivable shall be subject to the provisions of the Foreign Exchange Management Act, 1999.

42 of 1999.

(2) On execution of agreement in writing for assignment of receivables, all the rights, remedies and any security interest created over any property exclusively to secure the due payment of receivable shall vest in the assignee and the assignee shall have an absolute right to recover such receivable and exercise all the rights and remedies of the assignor whether by way of damages or otherwise, or whether notice of assignment as provided in sub-section (1) of section 8 is given or not.

(3) Any assignment of receivables which constitute security for repayment of any loan advanced by any Bank or other creditor and if the assignor has given notice of such encumbrance to the assignee, then on accepting assignment of such receivable, the assignee shall pay the consideration for such assignment to the Bank or the creditor, as the case may be.

Notice to
debtor and
discharge of
obligation of
such debtor.

8. Any assignee of a receivable shall not be entitled to demand payment of the receivable from the debtor in respect of such receivables unless notice of such assignment is given to the debtor by the assignor or the assignee alongwith express authority in its favour granted by the assignor.

Discharge of
liability of
debtor on
payment to
assignee.

9. Where a notice of assignment of receivable is given by the assignor or the assignee, as the case may be, under section 8 the debtor on receipt of such notice, shall make payment to the assignee and payment made to such assignee in discharge of any obligation in relation to the receivables specified in the notice shall fully discharge the debtor making the payment, from corresponding liability in respect of such payment.

Payment
made by
debtor to
assignor to be
held in trust
for benefit of
assignee in
certain cases.

10. Where no notice of assignment of receivables is given by the assignor or under his authority by the assignee, any payment made by the debtor in respect of such receivables to the assignor shall be held in trust for the benefit of the assignee which shall be forthwith be paid over to such assignee, as the case may be, or its agent duly authorised in this behalf.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF PARTIES TO CONTRACT FOR ASSIGNMENT OF RECEIVABLES

Right and
obligations of
parties to
contract for
assignment of
receivables.

11. Without prejudice to the provisions contained in any other law for the time being in force, the debtor shall have the right to notice of assignment under section 7 and till notice is served on the debtor, the rights and obligations in its contract with the assignor, shall remain unchanged, excepting the change of the party to whom the receivables are assigned which may become entitled to receive the payment of the receivable from the debtor.

Liability of
debtor.

12. Where a notice of assignment as referred to in section 8 is served, the debtor shall,—

(a) intimate the assignee the details of the deposits or advance or payment on account made to the assignor before the receipt of notice of assignment and also provide any other information to the assignee relating to the receivable as and when called upon by the assignee to do so;

(b) not be entitled to a valid discharge of his liability in respect of assigned receivables, unless he makes the payment due on an assigned receivables to the assignee.

13. Notwithstanding anything to the contrary contained in any other law for the time being in force, where a debtor makes any payment to an assignor which represents payment due on an assigned receivable, such payment shall be deemed to be for the benefit of the assignee, and the assignor shall be deemed to have received the amount of such payment as a trustee of the assignee and the assignor shall make payment of such amount to the assignee.

Assignor to be trustee of assignee.

14. If the assignor of receivables is a micro or small enterprise, the liability of the debtor to make payment due on assigned receivables shall be subject to the provisions contained in sections 15 to 17 of the Micro, Small and Medium Enterprises Development Act, 2006 with regards to the delayed payments of the receivables.

Liability of debtor in case of an assignor being micro or small enterprises.

15. (1) Save as otherwise provided in this Act, any assignment of the receivable shall not, without the express consent of the debtor in writing, affect the rights and obligations of the debtor, (including the terms and conditions of the contract).

Principle of debtor protection.

(2) Consequent upon the assignment of receivables, the payment instruction under the contract entered into between assignor and debtor may modify the person, address or account to which the debtor is required to make payment, but such instructions shall not modify:—

(a) the amount of debt specified in the original contract; or

(b) the place specified in the original contract at which payment is to be made or at a place other than that in which the debtor is situated; or

(c) the date on which payment is to be made or other terms of the original contract relating to payment.

16. In a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee,—

Defences and right of set off of debtor.

(a) all defences and right of set off arising from the original contract, entered into between the assignor and debtor or any other contract that was part of the same transaction, of which the debtor could avail himself as if the assignment had not been made and such claim were made by the assignor instead of assignee;

(b) any other right of set-off if it was available to the debtor at the time notice, under section 8, of the assignment was received by the debtor.

17. (1) Any agreement made before service of notice, under section 8, of the assignment of a receivable between the assignor and the debtor that affects the assignee's rights in respect of that receivable shall be effective as against the assignee, and the assignee shall acquire rights in the assigned receivables, as modified by such agreement.

Modification of original contract.

(2) Any agreement made, after notice of the assignment between the assignor and the debtor that affects the assignee's rights, shall be ineffective as against the assignee unless,—

(a) the assignee consents to it; or

(b) the receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

(3) Nothing contained in sub-sections (1) and (2) shall affect any right of the assignor or the assignee arising from breach of an agreement between them.

18. If the assignor commits any breach of the original contract with the debtor, such breach shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee.

Breach of contract.

CHAPTER V

REGISTRATION OF ASSIGNMENTS

Registration
of certain
assignments of
receivables
transactions.

19. (1) Every factor shall file, for the purposes of registration, the particulars of every transaction of assignment of receivables in his favour with the Central Registry to be set-up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, within a period of thirty days from the date of such assignment or from the date of establishment of such registry, as the case may be, in the manner and subject to payment of such fee as may be prescribed in this behalf.

54 of 2002.

Explanation.— For the purpose of filing of particulars of every transaction of assignment of receivables with the Central Registry, the receivables may be described specifically or generally with reference to the debtor, or the period to which they relate or by any other general description by which such receivables can be identified.

(2) For the purposes of this Act, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to assignment of receivables in favour of a factor.

(3) On realisation of the assigned receivables or settlement of the claim against the debtors, the factor shall file satisfaction of the assignment of receivables in its favour, in such manner and subject to payment of such fees as may be prescribed in this behalf.

(4) The provisions for registration of transactions contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the rules made thereunder shall, *mutatis mutandis*, apply to the record of assignment of receivables in favour of a factor in the Central Register with the Central Registry.

54 of 2002.

Public
inspection.

20. (1) The particulars of transactions of assignment of receivables entered in the Central Register of such transactions under section 19 shall be open during business hours for inspection by any person on payment of such fee as may be prescribed.

(2) The Central Register referred to in sub-section (2) of section 19 maintained in electronic form, shall also be open during the business hours or such extended hours as may be specified by the Central Registry for inspection by any person through electronic media on payment of such fee as may be prescribed.

(3) The provisions for maintenance of Central Register and public inspection thereof contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the rules made thereunder shall, *mutatis mutandis*, apply.

54 of 2002.

CHAPTER VI

OFFENCES AND PENALTIES

Penalties.

21. If a default is made in filing under section 19 the particulars of any transaction of assignment of receivables and realisation of receivables by a factor, such company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Penalties for
non-
compliance of
direction of
Reserve Bank.

22. If any factor fails to comply with any direction issued by the Reserve Bank under section 6, such factor and every officer of the factor who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Offences.

23. If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, for which no specific penalty has been provided for, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

24. (1) No Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the Reserve Bank, generally or specially authorised in writing in this behalf, by the Reserve Bank.

Cognizance of offences.

(2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or a court superior thereto shall try any such offence punishable under this Act.

25. (1) Where an offence under this Act has been committed by a factor, every person who at the time the offence was committed was in charge of, and was responsible to, the factor, for the conduct of the business of the factor, as well as the factor, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by factors.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a factor and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the factor, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section, a "director", in relation to a factor means any officer entrusted with the management of the whole or substantially the affairs of the factor.

CHAPTER VII

MISCELLANEOUS

26. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Provisions of this Act to override other laws.

26 of 1881.
4 of 1882.
2 of 1934.
10 of 1949.
1 of 1956.
54 of 2002.
27 of 2006.

27. The provisions of this Act or the rules made thereunder shall be in addition to and not in derogation of the Negotiable Instruments Act, 1881, the Transfer of Property Act, 1882, the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949, the Companies Act, 1956, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Micro, Small and Medium Enterprises Development Act, 2006 or any other law for the time being in force.

Application of other laws not barred.

36 of 1963.

28. No assignee of any receivable shall be entitled to take any measures for recovery of any assigned receivable, through any court or Tribunal unless his claim in respect of the receivable is made within the period of limitation specified under the Limitation Act, 1963.

Limitation.

29. Save as otherwise provided in this Act, or unless required to do so by an order passed by any Court or Tribunal or any other statutory authority under any provision of law for the time being in force or for the purpose of recovery of the receivable, a factor shall maintain confidentiality and shall not disclose to any person information obtained by it from, any assignor, its present and future customers, its commercial and business activities and the terms of sale between the assignor and any debtor and other detail about the assignor.

Confidentiality of information.

30. (1) The Government may, on the recommendation of the Reserve Bank, declare by notification in the Official Gazette that any or all the provisions of this Act shall not apply to any bank or company or factor or class of factors either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose.

Power to exempt.

(2) A copy of every notification issued under sub-section (1), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both the Houses agree that the notification shall not be issued or, the notification shall have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the notification.

Provisions of this Act not to apply or affect in certain cases.

31. (1) The provisions of this Act shall not apply to any assignment of receivables arising under or from the following transactions, namely:—

(a) any merger, acquisition or amalgamation of business activities or sale or change in the ownership or legal status of the business;

(b) transactions on any stock exchange or commodities exchange regulated by the Securities and Exchange Board of India constituted under the provisions of the Securities and Exchange Board of India Act, 1992 or by the Forward Markets Commission under the Forward Contracts (Regulation) Act, 1952, respectively;

15 of 1992.
74 of 1952.

(c) financial contracts governed by netting agreements, except a receivable owed on the termination of all outstanding transactions;

(d) foreign exchange transactions except receivables in any foreign currency;

(e) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;

(f) bank deposits;

(g) a letter of credit or independent guarantee;

(h) rights and obligations of any person under the law governing negotiable instruments, negotiable warehouse receipts under the Warehousing (Development and Regulation) Act, 2007 or to instruments which are for the time being, by law or custom negotiable or any mercantile document of title to goods;

37 of 2007.

(i) sale of goods or services for any personal, family or household use.

(2) Nothing contained in this Act shall affect the rights and obligations of a consumer, manufacturer, trader or service provider under the provisions of the Consumer Protection Act, 1986.

68 of 1986.

Power of Central Government to make rules.

32. (1) The Central Government may, in consultation with the Reserve Bank, by notification and in the Electronic Gazette as defined in clause (s) of sub-section (1) of section 2 of the Information Technology Act, 2000 make rules for carrying out the provisions of this Act.

21 of 2000.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which the transactions of assignment of receivables in favour of a non-banking financial company shall be filed and the fee for filing such transaction under sub-section (1) of section 19;

(b) the form and manner in which satisfaction of assignment of receivable or settlement of the claim shall be registered and the fee for filing such transactions under sub-section (2) of section 19;

(c) fee for inspecting the Central Register under section 20; and

(d) any other matter which is required to be or may be prescribed, in respect of which provision is to be made or may be made by rules.

33. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Laying of
rules.

34. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Power to
remove
difficulties.

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

35. The enactments specified in the Schedule shall be amended in the manner specified therein.

Amendments
to certain
enactments.

THE SCHEDULE
(See section 35)

Year	Act No.	Short Title	Amendment
1908	5	The Code of Civil Procedure, 1908	In Order XXXVII, in rule 1, in sub-rule (2), in clause (b), after sub-clause (iii), the following sub-clause shall be inserted, namely:— "(iv) suit for recovery of receivables instituted by any assignee of a receivable."
2005	30	The Credit Information Companies (Regulation) Act, 2005	In section 2, in clause (f), after sub-clause (ii), the following sub-clause shall be inserted, namely:— "(iia) a factor as defined under clause (i) of the Regulation of Factor (Assignment of Receivables) Act, 2011."

STATEMENT OF OBJECTS AND REASONS

Inadequate working capital in a small scale or an ancillary industrial undertaking caused serious and endemic problems affecting the health of such undertaking. It was, therefore, felt that prompt payments of money by buyers should be statutorily ensured and mandatory provisions for payment of interest on the outstanding money, in case of default, should be made. With a view to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto, a legislation titled as "The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act" was enacted in 1993. The provisions of the said Act made it mandatory for the buyer to pay to the Small Scale Industry promptly, failing which he is required to pay interest to the supplier.

2. However, the aforesaid Act did not improve the situation of delayed payments and the same was repealed by the Micro, Small and Medium Enterprises Development Act, 2006 which provided for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. This Act made provision for liability for buyer to make payment to the supplier, being a micro or small enterprise and the National Small Industries Corporation, the Small Industries Development Corporation of a State or Union territory and any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises referred to in clause (n) of section 2 of the said Act (hereafter referred to as micro or small enterprises).

3. The Central Government received complaints regarding delay in payment to the micro or small industries. However, the enactment of the Micro, Small and Medium Enterprises Development Act, 2006 also did not improve the situation of delayed payments to small scale industries. The Reserve Bank constituted a Study Group in January, 1998 under the Chairmanship of Shri C. S. Kalyansundaram, former Managing Director, State Bank of India for examining the feasibility and mechanics of starting factoring organisations in the country and making recommendations regarding its theory, constitution, organisational set-up, scope of activities and other related matters. The Committee had noted that inadequacy of working capital finance with its attendant liquidity problem has been one of the major stumbling blocks in the viable running of small scale industry units and recommended that factoring for small scale industries could be mutually beneficial to both factors and small scale industry units. Besides, the said Committee, various other Committees set-up for alleviating the problems of small scale industry units, by the Government and the Reserve Bank during the last decade [including the Prime Minister's Task Force on Micro, Small and Medium Enterprises (2010)] have also recommended development of factoring services for small scale industries through policy and legislative prescriptions to address the problem of liquidity for the micro or small industries.

4. In view of the above, the Central Government decided to enact a legislation relating to factoring services and introduce a Bill titled as "The Regulation of Factor (Assignment of Receivables) Bill, 2011", to provide for and regulate the assignment of receivables by making provision for registration therefor and rights and obligations of parties to contract for assignment of receivables and for matters connected therewith or incidental thereto. Factoring service is one of the important mechanisms to address the issue of resources management for the Micro, Small and Medium Enterprises Sector. The Regulation of Factor (Assignment of Receivables) Bill, 2011, provides for a mechanism for assignment of receivables of the industry to a 'factor' and the payment of consideration by the 'factor' to the industrial unit.

5. The Regulation of Factor (Assignment of Receivables) Bill, 2011, *inter alia*, provides,—

(a) for the process of assignment of receivables due and payable to any assignor [being any enterprise or medium enterprise, micro enterprise or small enterprise as defined in clauses (e), (g), (h) and (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006, respectively engaged in any business activity] by any debtor, to any factor, being the assignee, by an agreement;

(b) that the debtor shall have the right to notice of assignment and till the notice is given, the assignee shall not be entitled to demand payment of the receivable from the debtor;

(c) that the liability of the debtor shall not be discharged unless he makes the payment due on an assigned receivable to the assignee;

(d) that the assignor would be the trustee of assignee for any payment received which is due on an assigned receivable;

(e) that if the assignor of receivables is a micro or small enterprise, the liability of the debtor to make payment on assigned receivables shall be subject to the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 with regard to delayed payments of receivables;

(f) for regulation of the factoring business;

(g) for empowering the Reserve Bank to issue directions, call for information from the factor and prohibit the financial institutions from undertaking factoring business, if the factor fails to comply with the direction given by the Reserve Bank;

(h) that the rights and obligations of the debtor cannot be changed without the express consent of the debtor;

(i) that any breach of contract with the debtor by the assignor shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee;

(j) provides for compulsory registration by the factor of every transaction of assignment of receivable with the Central Registry to be set-up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 within a period of thirty days from such assignment or from the date of establishment of such Registry, as the case may be, subject to payment of such fee as may be prescribed and provides that the particulars of transaction would be entered into the Central Register kept at the Head Office of the Central Registry;

(k) for penal provisions in cases of certain default or contravention of the provisions of the proposed legislation.

6. It is expected that the enactment of the proposed legislation would address the delay in payment and liquidity problems faced by the micro or small enterprises, though the proposed legislation applies to all enterprises including micro or small enterprises.

7. The Notes on Clauses explain in detail the various provisions contained in the proposed legislation.

8. The Bill seeks to achieve the above objects.

Notes on Clauses

Clause 1.—This clause relates to the short title, extent and commencement of the proposed legislation. This clause enables the Central Government to appoint a date with respect to the commencement of the proposed legislation. However, different dates may be appointed for different provisions of the proposed legislation and any reference in any such provision to the commencement of proposed legislation shall be construed as a reference to the coming into force of that provision.

Clause 2.—This clause defines certain expressions used in the Bill.

Clause 3.—This clause relates to registration of factors.

Sub-clause (1) of this clause provides that no factor shall commence or carry on the factoring business unless it obtains a certificate of registration from the Reserve Bank to commence or carry on the factoring business under the proposed legislation.

Sub-clause (2) of this clause provides that every factor shall make an application for registration to the Reserve Bank in such form and manner as it may specify. However, a company registered as a non-banking financial company and existing on the commencement of the proposed legislation and engaged in factoring business before such commencement shall make an application for registration as a factor to the Reserve Bank before the expiry of the period of six months from such commencement and, notwithstanding anything contained in sub-clause (1), may continue to carry on the factoring business until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

Sub-clause (3) of this clause provides that every applicant for grant of a certificate of a registration as a factor shall comply, for the purpose of registration, with all the requirements to be fulfilled by an applicant for grant of certificate of registration as non-banking financial company under the Reserve Bank of India Act, 1934 and all the provisions of that Act, so far as they relate to the registration of non-banking financial companies shall, *mutatis mutandis*, apply.

Sub-clause (4) of this clause provides that in the case of existing non-banking financial company the Reserve Bank may issue a fresh certificate of registration as a factor, if the principal business of the non-banking financial company is the factoring business.

Sub-clause (5) of this clause provides that every factor including factors not subject to requirement of registration under clause 5, shall be governed by the Reserve Bank of India Act, 1934, the rules and regulations made thereunder and the directions or guidelines issued by the Reserve Bank, from time to time.

Clause 4.—This clause relates to the provisions of non-banking financial companies which apply to a factor.

This clause provides that all provisions of Chapter IIIB of the Reserve Bank of India Act, 1934 relating to non-banking financial companies which have been granted a certificate of registration under sub-section (5) of section 45-IA of the Reserve Bank of India Act, 1934 shall (except those specifically provided for under the proposed legislation) *mutatis mutandis* apply to a factor which has been granted a certificate of registration under clause 3 of the proposed legislation.

Clause 5.—This clause relates to requirement for registration as a factor which would not apply to bank or statutory corporation or Government company:

This clause provides that nothing contained in clause 3 shall apply to a bank or any corporation established under an Act of Parliament or State Legislature, or a Government Company as defined under section 617 of the Companies Act, 1956.

Clause 6.—This clause relates to powers of Reserve Bank to give directions and to collect information from factors.

Sub-clause (1) of this clause provides that the Reserve Bank may, at any time by general or special order, direct that every factor shall furnish to it, in such form, at such intervals and within such time, such statements, information or particulars relating to factoring business undertaken by the factor, as may be specified by the Reserve Bank from time to time.

Sub-clause (2) of this clause provides that the Reserve Bank may, if it considers necessary in the interest of business enterprises availing factoring services or in the interest of factors or interest of other stake holders give directions to the factors either generally or to any factor in particular or group of factors in respect of any matters relating to or connected with the factoring business undertaken by such factors.

Sub-clause (3) of this clause provides that if any factor fails to comply with any direction given by the Reserve Bank under sub-clause (2), the Reserve Bank may prohibit such factor from undertaking the factoring business. However, before prohibiting any factor from undertaking the factoring business, the factor shall be given a reasonable opportunity of being heard.

Clause 7.—This clause relates to assignment of receivables.

Sub-clause (1) of this clause provides that any assignor may, by an agreement in writing, assign any receivable due and payable to him by any debtor, to any factor, being the assignee, for a consideration as may be agreed between the assignor and the assignee. However, if the debtor liable to pay the receivable or the business of factor is situated or established outside India, any assignment of receivable shall be subject to the provisions of the Foreign Exchange Management Act, 1999.

Sub-clause (2) of this clause provides that on execution of agreement in writing for assignment of receivables, all the rights, remedies and any security interest created over any property exclusively to secure the due payment of receivable shall vest in the assignee and the assignee shall have an absolute right to recover such receivable and exercise all the rights and remedies of the assignor whether by way of damages or otherwise, or whether notice of assignment as provided in sub-clause (1) of clause 8 is given or not.

Sub-clause (3) of this clause provides that any assignment of receivables which constitute security for repayment of any loan advanced by any Bank or other creditor and if the assignor has given notice of such encumbrance to the assignee, then on accepting assignment of such receivable, the assignee shall pay the consideration for such assignment to the Bank or the creditor, as the case may be.

Clause 8.—This clause relates to notice to debtor and discharge of obligation of such debtor.

This clause provides that any assignee of a receivable shall not be entitled to demand payment of the receivable from the debtor in respect of such receivables unless notice of such assignment is given to the debtor by the assignor or the assignee along with express authority in its favour granted by the assignor.

Clause 9.—This clause relates to discharge of liability of debtor on payment to assignee.

This clause provides that where a notice of assignment of receivable is given by the assignor or the assignee, as the case may be, under clause 8 the debtor on receipt of such notice, shall make payment to the assignee and payment made to such assignee in discharge of any obligation in relation to the receivables specified in the notice shall fully discharge the debtor making the payment, from corresponding liability in respect of such payment.

Clause 10.—This clause relates to payment made by debtor to assignor to be held in trust for benefit of assignee in certain cases.

This clause provides that where no notice of assignment of receivables is given by the assignor or under his authority by the assignee, any payment made by the debtor in respect of such receivables to the assignor shall be held in trust for the benefit of the assignee which shall be forthwith be paid over to such assignee, as the case may be, or its agent duly authorised in this behalf.

Clause 11.—This clause relates to rights and obligations of parties to contract for assignment of receivables.

This clause provides that without prejudice to the provisions contained in any other law for the time being in force, the debtor shall have the right to notice of assignment under clause 7 and till notice is served on the debtor, the rights and obligations in its contract with the assignor, shall remain unchanged, excepting the change of the party to whom the receivables are assigned which may become entitled to receive the payment of the receivable from the debtor.

Clause 12.—This clause relates to liability of debtor.

This clause provides that where a notice of assignment, as referred to in clause 8, is served, the debtor shall, (a) intimate the assignee the details of the deposits or advance or payment on account made to the assignor before the receipt of notice of assignment and also provide any other information to the assignee relating to the receivable as and when called upon by the assignee to do so; (b) not be entitled to a valid discharge of his liability in respect of assigned receivables, unless he makes the payment due on an assigned receivables to the assignee.

Clause 13.—This clause relates to assignor to be trustee of assignee.

This clause provides that notwithstanding anything to the contrary contained in any other law for the time being in force, where a debtor makes any payment to an assignor which represents payment due on an assigned receivable, such payment shall be deemed to be for the benefit of the assignee, and the assignor shall be deemed to have received the amount of such payment as a trustee of the assignee and the assignor shall make payment of such amount to the assignee.

Clause 14.—This clause relates to liability of debtor in case of an assignor being micro or small enterprises.

This clause provides that if the assignor of receivables is a micro or small enterprise, the liability of the debtor to make payment due on assigned receivables shall be subject to the provisions contained in sections 15 to 17 of the Micro, Small and Medium Enterprises Development Act, 2006 with regards to the delayed payments of the receivables.

Clause 15.—This clause relates to principle of debtor protection.

Sub-clause (1) of this clause provides that any assignment of the receivable shall not, without the express consent of the debtor in writing, affect the rights and obligations of the debtor.

Sub-clause (2) of this clause provides that consequent upon the assignment of receivables, the payment instruction under the contract entered into between assignor and debtor may modify the person, address or account to which the debtor is required to make payment, but such instructions shall not modify, (a) the amount of debt specified in the original contract; or (b) the place specified in the original contract at which payment is to be made or at a place other than that in which the debtor is situated; or (c) the date on which payment is to be made or other terms of the original contract relating to payment.

Clause 16.—This clause relates to defences and right of set off of debtor.

This clause provides that in a claim by the assignee against the debtor for payment of the assigned receivable, the debtor may raise against the assignee, (a) all defences and rights of set-off arising from the original contract, entered into between the assignor and

debtor or any other contract that was part of the same transaction, of which the debtor could avail himself as if the assignment had not been made and such claim were made by the assignor instead of assignee; and (b) any other right of set-off if it was available to the debtor at the time notice, under clause 8, of the assignment was received by the debtor.

Clause 17.—This clause relates to modification of original contract.

Sub-clause (1) of this clause provides that any agreement made before service of notice, under clause 8, of the assignment of a receivable between the assignor and the debtor that affects the assignee's rights in respect of that receivable shall be effective as against the assignee, and the assignee shall acquire rights in the assigned receivables, as modified by such agreement.

Sub-clause (2) of this clause provides that any agreement made, after notice of the assignment between the assignor and the debtor that affects the assignee's rights, shall be ineffective as against the assignee unless, (a) the assignee consents to it; or (b) the receivable is not fully earned by performance and either the modification is provided for in the original contract or, in the context of the original contract, a reasonable assignee would consent to the modification.

Sub-clause (3) of this clause provides that nothing contained in sub-clauses (1) and (2) shall affect any right of the assignor or the assignee arising from breach of an agreement between them.

Clause 18.— This clause relates to breach of contract.

This clause provides that if the assignor commits any breach of the original contract with the debtor, such breach shall not entitle the debtor to recover from the assignee any sum paid by the debtor to the assignor or the assignee.

Clause 19.— This clause relates to registration of certain assignments of receivables transactions.

Sub-clause (1) of this clause provides that every factor shall file, for the purposes of registration, the particulars of every transaction of assignment of receivables in his favour with the Central Registry to be set up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, within a period of thirty days from the date of such assignment or from the date of establishment of such registry, as the case may be, in the manner and subject to payment of such fee as may be prescribed in this behalf.

Sub-clause (2) of this clause provides that a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to assignment of receivables in favour of a factor.

Sub-clause (3) of this clause provides that on realisation of the assigned receivables or settlement of the claim against the debtors, the factor shall file satisfaction of the assignment of receivables in its favour, in such manner and subject to payment of such fees as may be prescribed in this behalf.

Sub-clause (4) of this clause provides that the provisions for registration of transactions contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the rules made thereunder shall, *mutatis mutandis*, apply to the record of assignment of receivables in favour of a factor in the Central Register with the Central Registry.

Clause 20.— This clause relates to public inspection.

Sub-clause (1) of this clause provides that the particulars of transactions of assignment of receivables entered in the Central Register of such transactions under clause 19 shall be open during business hours for inspection by any person on payment of such fee as may be prescribed.

Sub-clause (2) of this clause provides that the Central Register referred to in sub-clause (2) of clause 19 maintained in electronic form, shall also be open during the business hours or such extended hours as may be specified by the Central Registry for inspection by any person through electronic media on payment of such fee as may be prescribed.

Sub-clause (3) of this clause provides that the provisions for maintenance of Central Register and public inspection thereof contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the rules made thereunder shall, *mutatis mutandis*, apply.

Clause 21.— This clause relates to penalties.

This clause provides that if a default is made in filing under clause 19 the particulars of any transaction of assignment of receivables and realisation of receivables by a factor, such company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Clause 22.— This clause relates to penalties for non-compliance of direction of Reserve Bank.

This clause provides that if any factor fails to comply with any direction issued by the Reserve Bank under clause 6, such factor and every officer of the factor who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Clause 23.— This clause relates to offences.

This clause provides that if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, for which no specific penalty has been provided for, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Clause 24.— This clause relates to cognizance of offences.

Sub-clause (1) of this clause provides that no Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Reserve Bank.

Sub-clause (2) of this clause provides that no court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or a court superior thereto shall try any such offence punishable under the proposed legislation.

Clause 25.— This clause relates to offences by factors.

Sub-clause (1) of this clause provides that where an offence under the proposed legislation has been committed by a factor, every person who at the time the offence was committed was in charge of, and was responsible to, the factor, for the conduct of the business of the factor, as well as the factor, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, nothing contained in this sub-clause shall render any such person liable to any punishment provided in the proposed legislation, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

Sub-clause (2) of this clause provides that notwithstanding anything contained in sub-clause (1), where an offence under the proposed legislation has been committed by a factor and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the factor, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Clause 26.— This clause relates to provisions of this Act to override other laws.

This clause provides that the provisions of the proposed legislation shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Clause 27.— This clause relates to application of other laws not barred.

This clause provides that the provisions of the proposed legislation shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Clause 28.— This clause relates to limitation.

This clause provides that any assignee can take any measure for recovery of assigned receivable through any court or Tribunal only if his claim is made within the period of limitation specified under the Limitation Act, 1963.

Clause 29.— This clause relates to confidentiality of information.

This clause provides that a factor shall maintain confidentiality and shall not disclose to any person information obtained by it from, any assignor, its present and future customers, its commercial and business activities and the terms of sale between the assignor and any debtor and other detail about the assignor. However, this information could be disclosed on the orders passed by any Court or Tribunal or any statutory authority.

Clause 30.— This clause relates to power to exempt.

Sub-clause (1) of this clause empowers the Central Government, on the recommendation of the Reserve Bank, to exempt, by notification in the Official Gazette, any Bank or Company or factor from the applicability of any or all provisions of this Act.

Sub-clause (2) of this clause provides that every such notification made by the Central Government shall be laid before each House of Parliament.

Clause 31.— This clause relates to provisions of this Act not to apply or affect in certain cases.

This clause provides that the provisions of the proposed legislation shall not apply, *inter alia*, to any assignment of receivable under or from certain transactions such as merger of business activities, transactions on stock exchange or commodities exchange, netting contracts, inter-bank payments, bank deposits, negotiable instruments and sale of goods or services for any personal, family or household dues.

Clause 32.— This clause relates to power of Central Government to make rules.

This clause confers power upon the Central Government to make rules in respect of matters specified in the said clause.

Clause 33.— This clause relates to laying of rules.

This clause provides that the rules made by the Central Government under the proposed legislation shall be laid before each House of Parliament.

Clause 34.— This clause relates to power to remove difficulties.

This clause empowers the Central Government to remove any difficulty which may arise in giving effect to the provisions of the proposed legislation.

Clause 35.— This clause relates to amendments of certain enactments.

This clause provides to amend the Code of Civil Procedure, 1908 to make available the benefits of summary proceedings for recovery of debts or dues under a factoring arrangement to a factor and amends the Credit Information Companies (Regulation) Act, 2005 to define factor as a “credit institution which are consequential nature.”

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 32 empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include, (a) the form and manner in which the transactions of assignment of receivables in favour of a non-banking financial company shall be filed and the fee for filing such transaction under sub-clause (1) of clause 19; (b) the form and manner in which satisfaction of assignment of receivable or settlement of the claim shall be registered and the fee for filing such transactions under sub-clause (2) of clause 19; (c) fee for inspecting the Central Register under clause 20; and (d) any other matter which is required to be or may be prescribed, in respect of which provision is to be made or may be made by rules.

2. Clause 33 provides that the rules made by the Central Government under the proposed legislation shall be laid before each House of Parliament.

3. The matters in respect of which rules may be made by the Central Government are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

4. The delegation of legislative power is, therefore, of a normal character.

T. K. VISWANATHAN,
Secretary-General.